

Office of Superintendent of Schools  
Board Meeting of January 13, 2015

January 4, 2016

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

**SUBJECT: INITIAL READING: PROPOSED AMENDMENTS TO BOARD  
POLICY 0133, QUASI-JUDICIAL**

**COMMITTEE: INNOVATION, GOVERNMENTAL RELATIONS AND  
COMMUNITY ENGAGEMENT**

**LINK TO  
STRATEGIC  
BLUEPRINT: INFORMED, ENGAGED & EMPOWERED STAKEHOLDERS**

Under Section 1001.41(1) and 1001.43(10), F.S., the School Board is responsible for adopting and revising policies necessary for the efficient operation and general improvement of the school system, including ensuring that its policies are correct, comply with statutory requirements, and conform to current practices. Historically, the Board has appointed local volunteer attorneys to serve as hearing officers for due process hearing requests challenging recommended alternative education assignments and expulsions. Due to a significant decrease in the number of requests for hearings over the last five (5) years and the difficulty in maintaining a list of available qualified local hearing officers, Board Policy 0133, *Quasi-Judicial*, is proposed to be amended to allow these requests to be heard by an Administrative Law Judge (ALJ) assigned by the Division of Administrative Hearings (DOAH) in accordance with Chapter 120, F.S. The amendment will continue to allow the Board to fulfill its statutory and constitutional responsibility to provide appropriate due process in student disciplinary matters. After any hearing, the ALJ will submit a recommended order to the School Board which will issue the final order. The policy is also proposed to be amended to comply with 2015 legislative changes related to the manner in which final orders are drafted and maintained.

Attached is the Notice of Intended Action and the proposed policy amendments. Changes are indicated by underscoring words to be added and ~~striking through~~ words to be deleted.

**G-1**

Authorization of the Board is requested for the Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedure Act to amend Policy 0133, *Quasi-Judicial*.

**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 amend Policy 0133, *Quasi-Judicial*.

## **NOTICE OF INTENDED ACTION**

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on January 13, 2016, its intention to amend Board Policy 0133, *Quasi-Judicial*, at its meeting of March 9, 2016.

**PURPOSE AND EFFECT:** Policy 0133, *Quasi-Judicial*, is proposed to be amended to allow student expulsion due process hearing requests to be heard by an Administrative Law Judge (ALJ) assigned by the Division of Administrative Hearings (DOAH). Historically, the Board has appointed local volunteer attorneys to serve as hearing officers for due process hearing requests challenging recommended alternative education assignments and expulsions. Due to a significant decrease in the number of requests for hearings over the last five (5) years and the difficulty in maintaining a list of available qualified local hearing officers, this amendment will allow the Board to fulfill its statutory and constitutional responsibilities to provide appropriate due process in student disciplinary matters. The policy is also proposed to be amended to comply with 2015 legislative changes related to the manner in which final orders are drafted and maintained.

**SUMMARY:** Under Sections 1001.41(1) and 1001.43(10), F.S., the School Board is responsible for adopting and revising policies necessary for the efficient operation and general improvement of the school system, including ensuring that its policies are correct, comply with statutory requirements, and conform to current practices. The proposed amendments to Policy 0133, *Quasi-Judicial*, are intended to provide an allowable alternative hearing process for student expulsions.

**SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED:** 1001.41 (1), (2),(5), 1001.42 (8), 1001.43 (1),(10) F.S.

**LAWS IMPLEMENTED INTERPRETED OR MADE SPECIFIC:** 120.569, 120.57, 1001.41 (1),(2),(5); 1001.42 (8), 1001.43 (1),(10),1006.07(1)(a), F.S.

**IF REQUESTED, A HEARING WILL BE HELD DURING SCHOOL BOARD MEETING OF** March 9, 2016, 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 February 8, 2016, 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, F. S.

**COPIES OF THE PROPOSED AMENDED POLICIES** are 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.

1

FUNCTIONS

2 0133

**Quasi-Judicial**

3 The School Board may assume jurisdiction over any dispute or  
4 controversy arising within the District and concerning any matter in  
5 which authority has been vested in the Board by statute, contract,  
6 or policy. The Board shall act as final appeal in the resolution of all  
7 matters of dispute within the school system including personnel due  
8 process hearings, student expulsions and alternative education  
9 assignments, bid protests and charter school contract terminations  
10 and nonrenewals. These appeals shall appear on the agenda in  
11 order to be adjudicated by the Board.

12 | ~~F.S. 1012.22, 1012.34~~

13 **Due Process Hearings**

14 This section provides the due process request procedures for  
15 adjudicatory proceedings in which the Board is a party.

16 A. Filing Timelines

17 All parties entitled to a hearing under a collective bargaining  
18 agreement may file a request according to the rules and time  
19 limits in the agreement. Failure to file a timely request shall  
20 be deemed a waiver of the right to a hearing.

21 Students and parents/guardians of students recommended  
22 for expulsion or alternative educational assignment shall file  
23 a request for hearing within fifteen (15) calendar days of the  
24 date of the notice of disciplinary action. Failure to file a  
25 timely request shall be deemed a waiver of the right to a  
26 hearing.

27 Parents or guardians of students requesting a hearing on  
28 identification, evaluation, placement or the provision of a free  
29 appropriate public education to exceptional education  
30 students shall proceed according to the procedural  
31 safeguards in Policy 2460.

1 A notice of bid protest shall be filed within seventy-two (72)  
2 hours after the posting of the bid tabulation or receipt of  
3 notice of the Board's decision or intended action. A formal  
4 petition must be filed within ten (10) days after filing the  
5 notice of protest. Saturdays, Sundays, and legal holidays  
6 shall be excluded in the computation of the seventy-two (72)  
7 hour time period. Failure to file a timely petition shall be  
8 deemed a waiver of the right to a hearing.

9 A request for a hearing to appeal a ninety (90) day charter  
10 contract termination or non-renewal must be filed by the  
11 charter school governing board within fourteen (14) calendar  
12 days after receiving the notice of termination. A request for a  
13 hearing to appeal an immediate termination must be filed  
14 within ten (10) calendar days. Failure to file a timely request  
15 shall be deemed a waiver of the right to a hearing.

16 B. Filing Requirements

17 All requests for hearings must be in writing and filed with the  
18 Clerk of the Board.

19 Requests for hearings on student expulsions and alternative  
20 educational assignments will be granted or denied within  
21 fifteen (15) calendar days of receipt. A request may be denied  
22 if it is untimely or fails to meet filing requirements.

23 Requests for hearings on student expulsions, alternative  
24 education assignments, employee disciplinary matters, formal  
25 petitions for bid protests, and charter contract terminations  
26 and nonrenewals, must contain:

- 27 1. name and address of the petitioner;
- 28 2. explanation of substantial interests that will be  
29 affected by the Board's action;
- 30 3. statement of when and how petitioner received the  
31 notice of the Board decision;
- 32 4. statement of disputed issues of material fact; if there  
33 are none, the request must state that there is no  
34 disputed issue of material fact;

1 5. a concise statement of the ultimate facts alleged, and  
2 the rules, regulations, statutes and constitutional  
3 provisions which entitle the petitioner to relief; and

4 6. a description of the relief requested.

5 Hearing requests that do not comply with these conditions  
6 are subject to dismissal for lack of legal sufficiency.

7 C. Proceedings

8 When a request for hearing is made, unless the Board  
9 determines that it is not timely or does not meet the filing  
10 requirements, the Board shall forward the request and all  
11 accompanying materials to the Division of Administrative  
12 Hearings ~~or local hearing officer~~ and shall notify all parties of  
13 its action.

14 1. Employee discipline

15 Hearings on employee disciplinary matters shall be  
16 conducted according to the appropriate collective  
17 bargaining agreement.

18 2. General student expulsion and alternative education  
19 assignment

20 Hearings on student expulsions and alternative  
21 education assignments, except for those involving  
22 students with disabilities, shall be conducted by ~~local~~  
23 hearing officers ~~an Administrative Law Judge assigned~~  
24 by the Division of Administrative Hearings pursuant to  
25 F.S. Chapter 120.

1 The Board shall provide a court reporter but the cost of  
2 preparing the hearing transcript shall be the financial  
3 responsibility of the party requesting the transcript.  
4 Students and parents who cannot afford a hearing  
5 transcript may petition the Board to pay the cost of the  
6 transcript by filing an affidavit stating that the student  
7 participates in or is eligible for the Board's free and  
8 reduced meal program. If the student is not eligible for  
9 the free and reduced meal program, the student or  
10 parent must provide an insolvency affidavit that  
11 identifies the members of the household, the total  
12 wages, benefits, or other income received by all  
13 members of the household, and the time period in  
14 which those resources are received. The Board Clerk  
15 shall verify and certify that the student is indigent  
16 according to applicable guidelines. Upon certification,  
17 the Board Attorney shall order and pay the costs of the  
18 transcript. A denial of certification may be reviewed by  
19 the Superintendent whose decision shall be final.

20 Following the assignment of an Administrative Law  
21 Judge, hearing officer, the Board shall file a Notice of  
22 Specific Charges that contains:

- 23 a. name of student;
- 24 b. explanation of how the student will be affected  
25 by the Board's action;
- 26 c. statement of when and how the School Board  
27 delivered its notice of disciplinary action to  
28 student or student's parent;
- 29 d. a concise statement of material facts, disputed  
30 or otherwise;
- 31 e. rules, regulations, statutes and/or  
32 constitutional provisions that the Board is  
33 relying upon; and
- 34 f. demand for relief.

- 1                                    Within ten (10) business days of the date of the notice,  
2                                    the student or parent may submit a written answer to  
3                                    the Notice of Specific Charges challenging the Board's  
4                                    action. The Board may submit a written response to  
5                                    any written answer filed by the student or parent.
- 6                                    The ~~Hearing Officer's~~ recommended order issued by the  
7                                    Administrative Law Judge shall be submitted to the  
8                                    Board within fifteen (15) calendar days of the hearing  
9                                    unless another date is agreed upon.
- 10                                  3.        Students with disabilities
- 11                                    Hearings on students with disabilities, including  
12                                    disciplinary action, shall be conducted by an  
13                                    Administrative Law Judge assigned by the Division of  
14                                    Administrative Hearings.
- 15                                  4.        Bid protests
- 16                                    Hearings on bid protests shall be conducted by an  
17                                    Administrative Law Judge assigned by the Division of  
18                                    Administrative Hearings pursuant to F.S. Chapter 120.
- 19                                    Following receipt of a formal written bid protest, and  
20                                    prior to forwarding it to the Division of Administrative  
21                                    Hearings, the Board shall provide an opportunity to  
22                                    resolve the protest within seven (7) days, excluding  
23                                    Saturdays, Sundays and legal holidays.
- 24                                  5.        Charter contract terminations and non-renewals
- 25                                    Hearings on charter contract terminations and  
26                                    non-renewals shall be conducted by an Administrative  
27                                    Law Judge assigned by the Division of Administrative  
28                                    Hearings pursuant to F.S. Chapter 120. For  
29                                    ninety (90) day terminations and non-renewals, the  
30                                    hearing must take place within sixty (60) days after  
31                                    receipt of a request for hearing. For immediate  
32                                    terminations, the hearing must take place and a final  
33                                    order issued within sixty (60) days.



1 D. *Ex Parte* Communications

2 Pursuant to F.S. 120.66, *ex parte* communications to the  
3 Board related to the merits of any dispute governed by this  
4 policy are prohibited beginning when the Board receives the  
5 Recommended Order from the Division of Administrative  
6 Hearings or the local hearing officer, until the Board issues a  
7 Final Order. If a Board member receives an *ex parte*  
8 communication in violation of this provision, the process in  
9 F.S. 120.66(2) shall be followed.

10 E. Exceptions

11 1. For due process hearings involving students with  
12 disabilities, no exceptions are allowed. For all other  
13 hearings governed by this policy, any party may  
14 submit written exceptions to the hearing officer's  
15 recommended order within fifteen (15) calendar days of  
16 the date of the recommended order. For bid protests,  
17 exceptions must be filed within ten (10) calendar days.  
18 Failure to timely file exceptions shall constitute an  
19 acceptance of all portions of a recommended order to  
20 which exceptions have not been filed. Any party may  
21 file a written response to any exceptions filed within  
22 ten (10) calendar days from the date the exceptions  
23 were served. These timelines may be shortened for  
24 charter contract terminations and non-renewals unless  
25 the parties agree to extend the statutory deadline for  
26 issuance of a final order.

27 2. All portions of the record, including the transcript and  
28 proposed final orders must be filed with any  
29 exceptions.

30 3. A written request for oral argument must be filed at  
31 least seven (7) days prior to the meeting during which  
32 the Board will consider the exceptions. If oral  
33 argument is timely requested, each party shall be  
34 provided ten (10) minutes at the Board meeting to  
35 argue the exceptions.

36 F. Options Concerning Recommended Orders

37 1. The Board may adopt the recommended order as the  
38 final Order of the Board.

- 1                   2.     The Board may reject or modify the conclusions of law  
2                   and interpretations of administrative rules over which  
3                   it has substantive jurisdiction.
- 4                   3.     The Board may not reject or modify the findings of fact  
5                   contained in the recommended order unless the Board  
6                   first determines from a review of the complete record  
7                   and states with particularity in the order that the  
8                   evidence or that the proceedings on which the findings  
9                   were based did not comply with the essential  
10                  requirements of the law.
- 11                  4.     The Board may accept the recommended order but  
12                  may not substantially modify or alter it without a  
13                  review of the complete record. If the Board  
14                  substantially alters or modifies the recommended  
15                  order, it must state with particularity its reasons for  
16                  doing so and cite to the record to justify the action.
- 17                  5.     The Board's decision shall be based solely on the  
18                  record and no Board member shall consider any  
19                  matter not contained in the record as a basis for  
20                  deciding the case.
- 21                  G.     Final Order
- 22                  1.     The final order must be in writing and include any  
23                  findings of fact and conclusions of law separately  
24                  stated.
- 25                  2.     ~~If exceptions are heard, the Board shall enter a final~~  
26                  ~~order~~ must that explicitly rules on each exception. The  
27                  Board is not required, however, to rule on an exception  
28                  that does not clearly identify the disputed portion of  
29                  the recommended order by page number or paragraph,  
30                  that does not identify the legal basis for the exception  
31                  or that does not include appropriate and specific  
32                  citations to the record.
- 33                  3.     The Board member presiding over the meeting at which  
34                  the order is adopted shall execute the final order.
- 35                  4.     Each final order shall contain a statement that judicial  
36                  review is available under F.S. 120.68 within thirty (30)  
37                  calendar days of the rendition of the final order.  
38

1                   **Indexing, Management, and Availability of Final Orders**

2                   All final orders and a current subject-matter index identifying all  
3                   final orders shall be made available for public inspection and  
4                   copying, at no more than cost.

5                   All final orders issued pursuant to F.S. 120.5695, 120.57 (1), (2),  
6                   and (3), shall be indexed and maintained in accordance with this  
7                   policy and Florida law.

8                   All final orders shall be sequentially numbered as rendered using a  
9                   two-part number separated by a dash with the first part before the  
10                  dash indicating the year and the second part indicating the  
11                  numerical sequence of the order issued for that year beginning with  
12                  number 1 of each new calendar year. The assigned designation  
13                  prefix, which is "MDCPS," shall precede the two-part number.

14                  A.       System for Indexing Final Orders

15                   1.       The index shall be alphabetically arranged by main  
16                   subject headings. The applicable subject of the action  
17                   construed within the final order shall determine the  
18                   main subject headings and subheadings in the index.  
19                   Main subject headings shall be all capital letters and  
20                   shall be flush left on the page followed by relevant  
21                   subheadings which shall be initial caps and lower case  
22                   letters indented. Subheadings and sub-subheadings  
23                   at equal indentations shall be alphabetized. The  
24                   numbers of the final orders shall be listed sequentially  
25                   in an indentation immediately below the applicable  
26                   subheading. Cross references shall be used to direct  
27                   the user to subject headings which contain the  
28                   relevant information. Related key words (specific  
29                   words, terms, and phrases) and common and  
30                   colloquial words shall be listed and cross referenced to  
31                   the appropriate main subject headings.

32                   2.       The main subject headings to be used in the index are  
33                   as follows:

34                   a.       BID PROTESTS

35                   b.       BUSINESS SERVICES

36                   c.       EMPLOYEES

- 1 d. HEARING DENIALS
- 2 e. PROCEDURE
- 3 f. STUDENTS
- 4 3. The main subject headings shall be consulted by the  
5 Board Clerk and subsequent similar entries shall be  
6 indexed under the existing appropriate heading. The  
7 index shall be cumulative and shall be updated and  
8 made accessible to the public at least every 120 days.  
9 New main subject headings will be added when  
10 necessary. The index shall be cumulative for one (1)  
11 calendar year.
- 12 4. The Clerk of the Board shall index all final orders.
- 13 B. Maintenance of Records
- 14 All final orders that comprise final Board action and that  
15 must be indexed pursuant to this rule shall be permanently  
16 maintained by the Board pursuant to the retention schedule  
17 provided by law Department of State, Division of Library and  
18 Information Services.
- 19 C. Plan
- 20 1. The Board shall make final orders accessible and  
21 available to the public by sequentially numbering and  
22 indexing all final orders. The Board shall make the  
23 final orders and subject matter index available to the  
24 public.
- 25 2. The Board Clerk shall assist the public in obtaining  
26 information pertaining to final orders.
- 27 3. The system or process used by the Board Clerk to  
28 search and locate all final orders is as follows:
- 29 a. The Clerk shall enter into a computer all final  
30 orders according to subject matter.

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- b. The Clerk shall search and locate final orders by consulting main subject headings, subheadings and sub-subheadings. The Clerk shall then locate the requested final order which will be filed sequentially by final order number and housed in the office of the Board Clerk.
4. The Board maintains and stores the final orders and index in the office of the Board Clerk located in the Board Administration Building, 1450 N.E. 2nd Avenue, Miami, Florida 33132. The office of the Board Clerk is open to the public between the hours of 8:00 a.m. and 4:30 p.m., excluding holidays and weekends.

13 |

14 | F.S. 120.53, 120.569, 120.57, 1006.07, 1012.22, 1012.34

15 |

16 | Revised 11/22/11