

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

SUBJECT: FINAL READING: TO AMEND POLICIES 9215, *DIRECT-SUPPORT ORGANIZATIONS*; 6460, *BUSINESS CODE OF ETHICS*; AND 1129, *CONFLICT OF INTEREST*

COMMITTEE: FISCAL ACCOUNTABILITY & GOVERNMENT RELATIONS

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

At its regular meeting of November 18, 2020, the Board approved Agenda Item G-2 authorizing the amendment of Board Policies 9215, *Direct-Support Organizations*, 6460, *Business Code of Ethics*, and 1129, *Conflict of Interest*. These policy amendments were initiated as a result of Item H-25 at the Board's regular meeting of October 21, 2020, by Vice Chair Dr. Steve Gallon III, directing the Superintendent to initiate rulemaking proceedings to amend, in consultation with the School Board Attorney and Chief Auditor, applicable School Board policies governing Direct Support Organizations (DSOs), Business Ethics, and Procurement.

The amendments to Board Policies 9215, *Direct-Support Organizations* and 1129, *Conflict of Interest*, are proposed to prohibit District employees, who have procurement authority for District goods or services, from soliciting or accepting a donation on behalf of a Direct-Support Organization (DSO) from any contractor, lobbyist, consultant, or bidder that has a pending bid solicitation, proposal or contract award for District goods or services. Additionally, Policy 9215, *Direct-Support Organizations* is proposed to be amended to require DSOs to provide quarterly written reports of the following to the School Board: (1) any and all donations and/or pledges to donate to the DSO made by contractors, lobbyists, consultants, and bidders that exceed or will exceed \$5000.00 within a one-year period, and for which there is a pending bid solicitation, proposal, or contract award for District goods or services; and (2) any and all District resources used during the reporting quarterly period in support of the DSO and its operations.

Policy 6460, *Business Code of Ethics*, is proposed to be amended to prohibit bidders, contractors, lobbyists, and consultants from making donations to any School Board DSO

when they have a pending bid solicitation, proposal, or contract award for District goods or services, or when they are representing an entity that has a pending bid solicitation, proposal, or contract award for District goods or services.

The Notice of Intended Action was published in the Miami Daily Business Review on November 23, 2020 and posted in various places for public information and mailed to various organizations representing persons affected by the amended policies and individuals requesting notification. The time to request a hearing or protest the adoption of these amendments has elapsed.

Attached are the Notice of Intended Action and policy amendments. Changes 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 the proposed amendments to Board Policies 9215, *Direct-Support Organizations*, 6460, *Business Code of Ethics*, and 1129, *Conflict of Interest*, and authorize the Superintendent to file the amended policies with The School Board of Miami-Dade County, Florida to be effective January 13, 2021.

NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on November 18, 2020, its intention to amend Board Policies 9215, *Direct-Support Organizations*, 6460, *Business Code of Ethics*, and 1129, *Conflict of Interest*, at its regular meeting on January 13, 2021.

PURPOSE AND EFFECT: Board Policies 9215, *Direct-Support Organizations*, 6460, *Business Code of Ethics*, and 1129, *Conflict of Interest*, are proposed to be amended to implement the Board's action at its regular meeting of January 13, 2021.

Policy 9215, *Direct-Support Organizations* and Policy 1129, *Conflict of Interest*, are proposed to be amended to prohibit District employees, who have procurement authority for District goods or services, from soliciting or accepting a donation on behalf of a Direct-Support Organization (DSO) from any contractor, lobbyist, consultant, or bidder that has a pending bid solicitation, proposal or contract award for District goods or services. Additionally, Policy 9215, *Direct-Support Organizations* is proposed to be amended to require DSOs to provide quarterly written reports of the following to the School Board: (1) any and all donations and/or pledges to donate to the DSO made by contractors, lobbyists, consultants, and bidders that exceed or will exceed \$5,000.00 within a one-year period, and for which there is a pending bid solicitation, proposal, or contract award for District goods or services; and (2) any and all District resources used during the reporting quarterly period in support of the DSO and its operations.

Policy 6460, *Business Code of Ethics*, is proposed to be amended to prohibit bidders, contractors, lobbyists, and consultants from making donations to any School Board DSO when they have a pending bid solicitation, proposal, or contract award for District goods or services, or when they are representing an entity that has a pending bid solicitation, proposal, or contract award for District goods or services.

SUMMARY: Policy 9215, *Direct-Support Organizations* and Board Policy 1129, *Conflict of Interest*, are proposed to be amended to prohibit District employees, who have procurement authority for District goods or services, from soliciting or accepting a donation on behalf of a Direct-Support Organization (DSO) from any contractor, lobbyist, consultant, or bidder that has a pending bid solicitation, proposal or contract award for District goods or services. Policy 9215, *Direct-Support Organizations*, is also amended to require DSOs to provide quarterly written reports of the following to the School Board: (1) any and all donations and/or pledges to donate to the DSO made by contractors, lobbyists, consultants, and bidders that exceed or will exceed \$5,000.00 within a one-year period, and for which there is a pending bid solicitation, proposal, or contract award for District goods or services; and (2) any and all District resources used during the reporting quarterly period in support of the DSO and its operations. Policy 6460, *Business Code of Ethics*, is proposed to be amended to prohibit bidders, contractors, lobbyists, and consultants from making donations to any School Board DSO when they have a pending bid solicitation, proposal, or contract award for District goods or services, or when they are representing an entity that has a pending bid solicitation, proposal, or contract award for District goods or services.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: 1001.41 (1), (2); 1001.42 (6), (12); 1001.43 (2), (4), (10), F.S.

LAWS IMPLEMENTED INTERPRETED OR MADE SPECIFIC: 112.313, 1001.453, 1006.32, F.S.; F.A.C. Rule 6A-1.0013.

IF REQUESTED, A HEARING WILL BE HELD DURING SCHOOL BOARD MEETING OF January 13, 2021 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 December 16, 2020, 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)

COPIES OF THE PROPOSED NEW AND AMENDED POLICIES are available at cost to the public for inspection and copying in the Citizen Information Center, Room 102, 1450 N.E. Second Avenue, Miami, Florida 33132.



Book	Policy Manual
Section	<u>Final</u> Reading January 13, 2021
Title	DIRECT-SUPPORT ORGANIZATIONS
Code	9215
Status	<u>Final</u> Reading
Adopted	May 11, 2011

9215 - DIRECT-SUPPORT ORGANIZATIONS

Direct-support organizations (DSO) provide invaluable assistance to the students of this District and its programs. A "direct-support organization" is an organization that meets the following criteria:

- A. it is approved by the School Board;
- B. it is a Florida corporation not for profit, incorporated under the provisions of Chapter 617 and approved by the Department of State; and
- C. it is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of public kindergarten through 12th grade education and adult career and technical and community education programs in this District.

The Board may approve agreements with direct-support organizations that meet the criteria listed above.

Direct-support organizations must submit their applications directly to the Superintendent. If the Superintendent determines that the proposed DSO meets the criteria listed above, the application shall be submitted to the Board for approval.

The use of property, facilities, and personal services of the District by the DSO is permitted, subject to provisions of Florida law and Board policies.

No District funds will be appropriated to a direct-support organization for start-up funds to begin a fund-raising program. However, the Board authorizes personnel assigned to provide staff support to a DSO the ability to participate and assist in fund-raising activities in furtherance of the DSO's goals and objectives.

No District employee, who has procurement authority for District goods or services, shall solicit or accept a donation on behalf of a DSO from any contractor, lobbyist, consultant, or bidder that has

a pending bid solicitation, proposal, or contract award for District goods or services.

Each direct-support organization shall submit an annual audit of its accounts and records no later than ~~June 30th~~ March 1st. Each DSO shall also provide quarterly written reports to the School Board at a School Board meeting of (1) any and all donations and/or pledges to donate to the DSO made by contractors, lobbyists, consultants, and bidders that exceed or will exceed \$5,000 within a one-year period, and for which there is a pending bid solicitation, proposal, or contract award for District goods or services; and (2) identifying any and all District resources used to support the DSO and its operations during the quarterly reporting period.

The audit shall be performed by an independent certified public accountant according to rules adopted pursuant to F.S. 11.45(8) by the Auditor General and Commissioner of Education. The audit report shall maintain the anonymity of donors to the direct-support organization.

The Commissioner of Education, the Auditor General, and the Office of Program Policy Analysis and Government Accountability may require and receive from the organization or the District auditor any records relative to the operation of the organization. The identity of donors and all information identifying donors or prospective donors are confidential and exempt from State public records law. Any other records of such direct-support organizations subject to an audit are public record.

The direct-support organization shall also submit to the Superintendent and the Board an annual budget and report indicating any change in its goal(s), programs, and activities and/or bylaws within ninety (90) days of its adoption.

Effective 7/1/11

Legal F.S. 11.45(8), 119.07(1), 1001.453
 F.A.C. 6A-1.0013



Book	Policy Manual
Section	<u>Final</u> Reading January 13, 2021
Title	BUSINESS CODE OF ETHICS
Code	6460
Status	<u>Final</u> Reading
Adopted	May 11, 2011

6460 - BUSINESS CODE OF ETHICS

This Business Code of Ethics ("**Code**") shall govern the conduct of all bidders seeking business and all contractors, lobbyists, and consultants that have either a pending bid or contract or are currently under contract with the School Board. These standards of conduct supersede all prior written ethics policies adopted by the Board which may be in conflict with these standards and are to be read in conjunction with the latest applicable Board contracting and procurement policies and procedures. All contractors shall ensure that their subcontractors comply with this Code. The Board will accept bids and proposals for contracts and procurement of goods or services only from firms or entities which agree to comply with this Code and all applicable Board contracting and procurement policies and procedures.

Definitions

- A. Consultant - an individual providing information and advice in an area of expertise, pursuant to a contract with the Board. This may include, but is not limited to, real estate brokers, developers, and experts in their field.
- B. Contractor – an individual, company, joint venture, vendor, or other corporate entity who has entered into a contract to provide goods or services to the Board in accordance with an invitation to bid, a request for proposal, or otherwise by the approval of the Board.
- C. Lobbyist – any individual, firm, or corporation compensated by or who contracts for economic consideration from any principal person or organization for the purpose of lobbying. See Policy 8150 for a more complete definition.
- D. Bidder - any entity making a formal offer, bid or proposal to become a contractor of the School Board.

Intent and Purpose

- A. to protect the integrity of the school district's procurement process;

- B. to provide a uniform statement of expected conduct for consultants and contractors doing business with the Board in an effort to ensure a fair and ethical environment throughout the procurement process.

Code is not Exhaustive/Non-Exclusive

This policy does not address all ethical issues that may arise through the School District's procurement process. Nonetheless, each person or entity is expected to act in an ethical manner at all times while engaging in business with the Board.

Enforcement of Code of Conduct

Violations of any provisions of this Code may be investigated by the Board's Inspector General or by any other appropriate enforcement authority. The Board may reject any bid or proposal, or impose other sanctions against any person, contractor, or entity, that has not complied with the requirements of this Code according to State laws or Board policies.

Prohibited Conduct

No bidder, proposer, contractor, or subcontractor shall fraudulently deceive or attempt to deceive any School District official with regard to any material fact pertinent to any pending or proposed Board contract. Nor shall an individual, company, or other entity engage in conduct with the purpose or intent of placing any School District employee, official, or agent under personal obligation to the bidder, proposer, contractor or subcontractor by engaging in, but not limited to, the following acts or conduct: providing gifts or monetary compensation to a Board employee or promising gifts, or other compensation in return for a contract, or any other conduct that would place the employee in violation of the prohibitions contained in F.S. 112.313.

Avoidance of the Appearance of Impropriety

All contractors shall refrain from conduct which they know or reasonably should know is likely to create in the minds of reasonable, objective, fair-minded observers an appearance of impropriety.

Donations to School Board Direct-Support Organizations (DSO)

All bidders seeking business, and all contractors, lobbyists, and consultants that have a pending contract with the School Board, are prohibited from making donations to any School Board DSO when they have a pending bid solicitation, proposal, or contract award for District goods or services, or when they are representing an entity that has a pending bid solicitation, proposal, or contract award for District goods or services.

Lobbyist Registration

All consultants and contractors must ensure that any lobbyist working on their behalf comply with Policy 8150.

Gifts and Offers of Employment to School Personnel

No consultant, bidder, proposer, or contractor shall offer, give, or promise to offer or give directly or indirectly, any money, gift or gratuity to any School Board employee whose duties involve authorizing and/or procuring contracts for goods and services for the school district. Policy 1210.01, Policy 3210.01, and Policy 4210.01 regarding gifts to school personnel are incorporated by reference in this policy.

Similarly, no person or entity covered by this Code, including, but not limited to, consultant, bidder, proposer, or contractor shall offer, or promise to offer, either directly or indirectly, any future employment or business opportunity to any Board employee or consultant, their immediate family, spouse, significant other, or business associates of such persons, if such offer of employment is conditioned expressly or implicitly on the awarding of a present or future contract, or preference in the awarding of a contract to anyone at any time by the Board.

Disclosure of Employment of Former Board Employees

To prevent current or former Board employees from using their relationship with the Board from improperly influencing procurement decision-making, all bidders, proposers, consultants, and contractors are required to disclose the names of any of their employees who serve as agents or principals for the bidder, proposer or contractor, and who within the last two (2) years, have been or are employees of the Board. Such disclosures shall comply with current Board rules, but will include, at a minimum, the name of the former Board employee, a list of the positions the employee held in the last two years of his/her employment with the Board, and the dates the employee held those positions.

In addition, the Board will not contract with any bidder, proposer, consultant, or contractor that compensates any former Board employee or consultant to influence any action on a matter pending with the Board if that employee, within the last twelve (12) months, held a Board position in which they personally and substantially participated in the matter.

The Board will not contract with any bidder, proposer, contractor or sub-contractor that employs a former Board employee or consultant who, while serving in a Board position within the last two (2) years, substantially participated in the development of the invitation to bid or request for proposal's requirements or specifications, or who took part in contracting process for the specific goods or services being solicited by the Board. The Superintendent may waive this prohibition in writing for good cause with notification to the Board prior to awarding the contract. Good cause may be shown in circumstances where awarding the contract to another party will not be in the best interest of the Board.

Preclusion from Contracting for Individuals or Firms Involved in the Development of the Bid, Proposal, or Contract Specifications

No contractor or consultant who participates in the development of the scope of work, solicitation documents, contractual instruments, or of the technical specifications on behalf of the School District may participate as a proposer or sub-proposer or perform any work associated with that particular procurement. The Superintendent may waive this prohibition for good cause in writing prior to the award of the contract.

Conflicts of Interest

All individuals, firms, contractors, and consultants, must take steps to avoid conflicts of interest, for example, but not limited to, those conflicts delineated in Policy 0141.2, Policy 1129, Policy 3129, and Policy 4129. The Superintendent, in consultation with legal counsel, shall determine whether a conflict of interest exists and recommend appropriate action that will resolve the conflict. If it is determined that an actual or apparent conflict of interest exists, the Superintendent shall notify the contractor in writing of this finding and the actions that will be recommended to the Board in order to resolve the conflict of interest.

Non-Retaliation Policy

The Board encourages good faith reporting of all suspected violations of this Code. Anyone making a good faith report of a suspected violation of this Code shall not be subjected to any adverse action by the Board, nor shall anyone or any company, accused of violating this Code and subsequently found not to have committed a violation of this Code, be subjected to any adverse sanctions or penalties by the Board. The identity of any persons reporting violations of this Code shall be kept confidential to the extent permitted by law.

All suspected violations shall be reported to the Office of the Inspector General for investigation. If the Inspector General determines that the allegations have merit, the matter will be referred to the appropriate authorities. If the Inspector General determines that the matter should be investigated by another department or by an outside entity, the Inspector General may refer the matter to the other department or outside entity for investigation or final disposition.

Resolving Violations of the Code

If it is determined that a violation of this Code has taken place, the Board may take one or more of the following actions:

- A. meeting with the consultant or contractor to discuss the violation, and any and all possible resolutions to the violation(s);
- B. suspending the consultant or contractor in accordance with the provisions of the contract in question, or by initiating debarment procedures as established by Policy 6320.04;
- C. directing the prime contractor to remove a subcontractor who has been shown to have intentionally violated the Code from the project;
- D. rescinding, voiding, or terminating the contract as may be permitted by law, Board rules, or the relevant contract; and/or
- E. any other reasonable sanction deemed appropriate, and which is permitted by law, Board rules, and by the provisions of the impacted contract.

Prospective Application

This Code does not apply to contracts, written agreements, or published solicitations in existence at the time this Code was enacted. It will be incorporated into all formal bid solicitations, vendor applications, and to any Request for Proposals issued by the Board.

Effective 7/1/11

Legal F.S. 112.313, 1001.42(1)(2), 1001.42(12), 1001.43(10)



Book	Policy Manual
Section	<u>Final</u> Reading January 13, 2021
Title	CONFLICT OF INTEREST
Code	1129
Status	<u>Final</u> Reading
Adopted	May 11, 2011
Last Revised	October 21, 2020

1129 - **CONFLICT OF INTEREST**

Employees are governed by the Florida Constitution, statutory provisions contained in the Code of Ethics for Public Officers and Employees, Part III of F.S. Chapter 112, certain other statutes in the Education Code, and the Florida Commission on Ethics. The following sections of this policy provide the principles, in simplified form, in the Constitutional and 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 any exemptions.

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

Provisions

A. Gifts

1. 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. (F.S. 112.313(2))
2. No employee or his/her spouse or minor child shall accept any compensation, payment, or thing of value when s/he 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/her official capacity. (F.S. 112.313(4))

B. Misuse of Public Position

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

C. Disproportionate Benefit

Employees are prohibited from abusing their position in order to obtain a "disproportionate benefit" for themselves, their spouse, children, employer, or entities with which they have certain business interests. A disproportionate benefit means a benefit, privilege, exemption or result arising from an act or omission by a public employee that is inconsistent with the proper performance of their public duties.

D. Doing Business with the School Board

1. No employee acting in his/her official capacity shall directly or indirectly purchase, rent, or lease any goods or services for the District from any business entity of which the employee, spouse, or child is an officer, partner, director or proprietor, or in which the employee, spouse, or child, or any combination of them, has a material interest. (F.S. 112.313(3))
2. Some case-specific exceptions to this provision may apply. Employees should review F.S. 112.313(12), for exemptions that may be applicable to their particular situations.
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, 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 District shall 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, employees subject to these guidelines will make the following inquiries to the entity with whom they are contracting:
 1. Does the business entity have a contractual relationship with the Board for more than \$500?
 2. Is the contracting individual a principal or employee of an entity with a contractual relationship with the Board for more than \$500?
- b. If an affirmative answer is given to either inquiry above, the employee will request from the 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 Board policy. The 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. No employee shall disclose or use information not available to members of the general public and gained by reason of his/her official position for his/her personal gain or benefit or for the personal gain or benefit of any other person or business entity. (F.S. 112.313(8))
- F. Employees may not participate in the selection, award, or administration of a contract if they have a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, any member of their immediate family, their partner, or an organization which employs or is about to employ any of the parties described in this section, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The phrase "about to employ", as used herein, shall mean that, at the time of the selection, award, or administration of the contract, the employee is aware of an offer, promise, contract, or commitment of employment.
- G. Employees who have procurement authority for District goods or services are prohibited from soliciting or accepting donations on behalf of a District Support Organization (DSO), from any contractor, lobbyist, consultant, or bidder that has a pending bid solicitation, proposal, or contract award for District goods or services.

H. Employment After Termination

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 the District is interested for two (2) years after the employees' service terminates. (F.S. 112.313(9))

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 District employees who are employees or agents of not-for-profit organizations, other governmental agencies or those whose business relationship is determined by the Board to be in the best interest of the District.
3. The District is 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 Penalties below, penalties for violation of this provision include a civil penalty equal to the compensation that the employee received for the prohibited conduct.

Self-Reporting Requirement

All employees, upon initial hire and annually thereafter, shall certify that they will comply with this Board policy, and that they will self-report any relationship that may implicate a potential conflict of interest or other violations of this policy. The certification shall be submitted according to a process determined by the Office of Human Capital Management.

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/or public censure and reprimand. (F.S. 112.317)

Effective 7/1/11
Revised 10/21/20

© **Miami-Dade 2020**

Legal F.S. 112.313
 F.S. 1006.32