

January 7, 2004

Ms. Perla Tabares Hantman, Member

SUBJECT: THAT THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA DETERMINE THE POLICY FOR BOARD MEMBERS, WHEN NOT PHYSICALLY PRESENT, PARTICIPATING AND VOTING AT OFFICIAL MEETINGS AND RATIFY PREVIOUS BOARD ACTION

COMMITTEE: LEGISLATIVE RELATIONS, PUBLIC RELATIONS AND PERSONNEL SERVICES

By memorandum dated November 24, 2003, the Board Attorney rendered a legal opinion concluding that the Sunshine law does not prohibit a physically absent Board member from participating or voting at an official School Board meeting by telephonic media technology. Notwithstanding whether the Board Attorney's opinion is accurate or not, a determination of the advisability of permitting this to occur is a policy matter soundly within the discretion and control of the School Board itself.

In order to protect the Board and the district from any potential legal challenges, which could place a critical vote or votes at issue, it would be prudent to establish a written policy to either prohibit participation and voting at official meetings when a Board member is not physically present or to limit such participation and voting to extraordinary circumstances as determined by a two-thirds vote of the Board members physically present taken at the meeting in question. As indicated in a memorandum by the Board Attorney dated December 4, 2003, the Attorney advised that this issue came up once before in 1994 when a former Board member recovering from surgery, requested to participate and vote by speaker phone. A motion was made to grant her request but, upon a vote of the Board, the motion failed.

The most prudent course of action would be to prohibit participation and voting when a Board member is not physically present at the Board meeting. This ensures that legal challenges would be avoided and that the Sunshine law would be strictly followed by having all Board members vote for the record at the same physical location.

This issue arose at the School Board's November 18, 2003, Organization meeting where the Chair and Vice Chair as required by Florida law were elected. A Board member was permitted to participate and vote telephonically without a vote of the Board authorizing this action. To avoid any question concerning the legality of this vote, this item additionally recommends that the Board vote to ratify its previous vote for those positions.

**ACTION PROPOSED BY
PERLA TABARES HANTMAN:**

That The School Board of Miami-Dade County, Florida do the following:

- 1) Direct the Board Attorney to initiate Rulemaking to either
 - a) prohibit participation and voting at official meetings by any Board member who is not physically present; or
 - b) limit participation and voting of physically absent Board members to extraordinary circumstances as determined by a two-thirds vote of the Board members physically present taken at the meeting in question; and
- 2) Ratify the vote for Chair and Vice Chair taken at the November 18, 2003 Organization meeting.