

Office of Superintendent of Schools
Board Meeting of June 18, 2003

June 4, 2003

Office of School Board Attorney
Johnny Brown, School Board Attorney

**SUBJECT: PROPOSED PROMULGATION OF NEW SCHOOL BOARD RULE: FINAL
READING 6Gx13- 8C-1.212, CONE OF SILENCE**

**COMMITTEE: LEGISLATIVE RELATIONS, PUBLIC RELATIONS AND
PERSONNEL SERVICES**

The School Board of Miami-Dade County, Florida, announced on May 14, 2003 its intention to promulgate School Board Rule 6Gx13- 8C-1.212, Cone of Silence, at the meeting of June 18, 2003.

The Notice of Intended Action was published in the *Miami Daily Business Review* on May 19, 2003, posted in various places for public information and mailed to various organizations representing persons affected by the new rule and to individuals requesting notification.

The time to request a hearing or protest the adoption of this rule has elapsed.

In accordance with the provisions of the Administrative Procedure Act, this new rule is presented to The School Board of Miami-Dade County, Florida, for adoption and authorization to file the rule in the official records of The School Board of Miami-Dade County, Florida.

Attached are the Notice of Intended Action and the new rule.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, adopt new School Board Rule 6Gx13- 8C1.212, Cone of Silence, and authorize the Superintendent to file the rule with The School Board of Miami-Dade County, Florida, to be effective June 18, 2003.

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NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on May 14, 2003, its intention to promulgate new School board Rule 6Gx13- 8C-1.212, Cone of Silence, at its meeting of June 18, 2003.

PURPOSE AND EFFECT: A cone of silence would allow the district to prohibit communications during the procurement process regarding RFP's and bids, between potential vendors, service providers, bidders, lobbyists, consultants and school district personnel, including the Superintendent, School Board Members, and their assistants.

SUMMARY: The Cone of Silence prohibits any communication between potential vendors, bidders, lobbyists, consultants and school district personnel, including the Superintendent, School Board members, and their assistants. A Cone of Silence shall be applicable to each RFP, bid, or other competitive solicitation during the solicitation and review of bid proposals.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: 1001.41(1)(2); 1001.42(22); 1001.43(10) F.S.

LAW IMPLEMENTED, INTERPRETED, OR MADE SPECIFIC: 1001.43(10) F.S.; 1001.51(14) F.S.

IF REQUESTED, A HEARING WILL BE HELD DURING THE BOARD MEETING OF June 18, 2003, 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 by Section 120.541(1), F.S., must do so in writing by June 10, 2003, to the Superintendent of Schools, 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 NEW RULE is available for inspection and copying at cost by the public in the Citizen Information Center, Room 158, 1450 N.E. Second Avenue, Miami, Florida 33132.

Originator: Mr. Agustin J. Barrera

Date: April 30, 2003

School Board–Methods of Operation**CONE OF SILENCE**Definition

A. “Cone of Silence” means a prohibition on any communication regarding a particular Request for Proposals (RFP), bid, or other competitive solicitation between:

1. any person who seeks an award therefrom, including a potential vendor or vendor’s representative; and
2. any School Board member or the member’s staff, the Superintendent, Deputy Superintendent and their respective support staff, or any person appointed by the School Board to evaluate or recommend selection in such procurement process.

The Cone of Silence shall not apply to communication with the School Board Attorney or his or her staff, or with designated school district staff who are not serving on the particular Procurement Committee, to obtain clarification or information concerning the subject solicitation. For purposes of this section, “vendor’s representative” means an employee, partner, director, or officer of a potential vendor, or consultant, lobbyist, or actual or potential subcontractor or sub-consultant of a vendor, or any other individual acting through or on behalf of any person seeking an award.

B. A Cone of Silence shall be applicable to each RFP, bid, or other competitive solicitation during the solicitation and review of bid proposals. At the time of issuance of the solicitation, the Superintendent or the Superintendent’s designee shall provide public notice of the Cone of Silence. The Superintendent shall include in any advertisement and public solicitation for goods and services a statement disclosing the requirements of this section.

C. The Cone of Silence shall terminate at the time the Superintendent of Schools submits a written recommendation to award or approve a contract, to reject all bids or responses, or otherwise takes action which ends the solicitation and review process.

D. Nothing contained herein shall prohibit any potential vendor or vendor’s representative:

1. from making public representations at duly noticed pre-bid

- conferences or before duly noticed selection and negotiation committee meetings;
2. from engaging in contract negotiations during any duly noticed public meeting;
 3. from making a public presentation to the School Board during any duly noticed public meeting; or
 4. from communicating in writing with any school district employee or official for purposes of seeking clarification or additional information, subject to the provisions of the applicable RFP, or bid documents.

The potential vendor or vendor's representative shall file a copy of any written communication with the School Board Clerk who shall make copies available to the public upon request.

- E. Nothing contained herein shall prohibit the Procurement Committee's representative from initiating contact with a potential vendor or vendor's representative and subsequent communication related thereto for the purposes of obtaining further clarifying information regarding a response to an RFP, or competitive solicitation. Such contact shall be in writing and shall be provided to the members of the applicable Procurement Committee, including any response thereto.
- F. Any violation of this rule shall be investigated by the School Board's Inspector General and may result in any recommendation for award, or any RFP award, or bid award to said potential vendor or vendor's representative being deemed void or voidable. The potential vendor or vendor's representative determined to have violated this rule, shall be subject to debarment. In addition to any other penalty provided by law, violation of this rule by a school district employee shall subject the employee to disciplinary action up to and including dismissal.

Specific Authority: 1001.41(1)(2); 1001.42(22); 1001.43(10) F.S.

Law Implemented, Interpreted or Made Specific: 1001.43(10) F.S.; 1001.51(14) F.S.

History

New:

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA