

Office of School Board Attorney
Luis M. Garcia, Interim School Board Attorney

**SUBJECT: DISMISSAL OF PETITION FOR DECLARATORY STATEMENT
SUBMITTED BY MR. CHARLES VISCITO, SCHOOL BOARD CASE NO.
08-1201**

Section 120.565(1), Fla.Stat. (2008) permits agencies to provide declaratory statements to "any substantially affected person . . . regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances." The purpose of a declaratory statement is to resolve questions or doubts concerning the applicability (to the Petitioner) of statutory provisions, rules, or orders over which the agency has authority. A petition seeking a declaratory statement must be filed with "the clerk of the agency that has the authority to interpret the statute, rule, or order." See Fla. Admin. Code Rule 28-105.001 and 28-105.002.

On October 3, 2008, Mr. Charles Viscito filed a Petition for Declaratory Statement with the Clerk of The School Board of Miami-Dade County, Florida. Petitioner seeks a declaratory statement with respect to provisions of the Sunshine Law and the Administrative Procedure Act. Petitioner alleges that he was substantially affected when, at its September 5, 2008 regular Board meeting, the School Board took action on revised Agenda Item H-5. Approval of Agenda Item H-5 ultimately led to the selection and appointment of a new Superintendent for the Miami-Dade County school district. Through his Petition for Declaratory Statement, Petitioner sought to invalidate its selection and declare the agenda process inconsistent with the law.

On the same day the Petition was filed, a legal opinion was issued from the Office of the School Board Attorney on the general legal propriety of the Board's actions with respect to the revised Agenda Item H-5. The legal opinion concluded that the Board's actions complied with the requirements of the Sunshine Law, the Administrative Procedure Act [specifically § 120.525, Fla.Stat. (2008)], and School Board rules governing the submission and revision of agenda items. Consequently, the agency has already provided, through its counsel, its interpretation of applicable rules and statutes thus rendering the Petition moot and subject to dismissal.

The purpose of this item is to recommend a final disposition of the Petition. A proposed Final Order will be submitted to the Board under separate cover recommending dismissal of the Petition as moot.

RECOMMENDED: That The School Board of Miami-Dade County, Florida enter a Final Order dismissing, as moot, and as otherwise dismissable for reasons stated in the Order, the Petition for Declaratory Statement filed by Mr. Charles Viscito on October 3, 2008.