

Office of School Facilities
Jaime G. Torrens, Chief Facilities Officer

SUBJECT: THAT THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA:

1. **AUTHORIZE THE SUPERINTENDENT AND THE CHAIR TO EXECUTE THE REVISED INTERLOCAL AGREEMENT FOR PUBLIC SCHOOL CONCURRENCY BETWEEN THE SCHOOL BOARD AND MIAMI-DADE COUNTY (REVISED BOARD/COUNTY ILA), AND TO FORWARD SAME TO THE STATE DEPARTMENT OF COMMUNITY AFFAIRS (DCA) FOR REVIEW AND A DETERMINATION OF CONSISTENCY WITH GOVERNING STATUTES; AND**
2. **AUTHORIZE THE SUPERINTENDENT TO FORWARD TO ALL NON-EXEMPT MUNICIPALITIES THOSE SECTIONS OF THE REVISED BOARD/COUNTY ILA WHICH DIFFER FROM THE PREVIOUSLY APPROVED CONSENSUS INTERLOCAL AGREEMENT (CONSENSUS ILA), IN A FORM ACCEPTABLE TO THE SCHOOL BOARD ATTORNEY, FOR THEIR REVIEW AND ACTION, AS MAY BE REQUIRED; AND**
3. **AUTHORIZE THE SUPERINTENDENT AND THE CHAIR TO EXECUTE ANY AND ALL REQUIRED AMENDMENTS TO THE CONSENSUS ILA TO EFFECT SUCH CHANGES, INCLUDING SUBMITTALS TO THE DCA**

COMMITTEE: FACILITIES AND CONSTRUCTION REFORM

LINK TO STRATEGIC PLAN: IMPROVE CONSTRUCTION SERVICES

Introduction

The School Board, at its May 21, 2008 meeting, authorized the Superintendent and the Chair to finalize, execute and forward to Miami-Dade County (County) an Interlocal Agreement for school concurrency by and between the School Board and the County (Board/County ILA). Subsequently, the County made additional revisions to the Board/County ILA, which were of concern to the District and could not be accommodated as proposed, and as such, at its July 15, 2008 meeting, the School Board voted not to approve the County's then newly proposed revisions (see attached Board Item).

Since that time, District and County staffs have been diligently pursuing a mutually acceptable solution to the outstanding issues, and have now come to a consensus on all such issues, subject to the approval of the respective boards. The County has scheduled the proposed revised interlocal agreement between the School Board and Miami-Dade County (Revised Board/County ILA) for approval by the Board of County Commissioners (BCC) at its meeting of April 21, 2009. Based on the premise that the BCC will approve the Revised Board/County ILA on April 21st, this item has likewise been placed on the School Board's agenda for action at its April 22, 2009 meeting.

Additional Information

Since July of last year, District and County staffs have been tracking a total of six outstanding issues. The issues as well as their current resolution status are outlined below:

Issue 1: Deletion by the County of the provision affording participation by all non-exempt municipalities, in the annual assessment of the geographic areas as it relates to the implementation of the school concurrency system.

Resolution: The provision has been reinstated (Section 9.2(a) of the Revised Board/County ILA), thereby resolving the outstanding issue.

Issue 2: Inclusion of a provision that would have allowed the County to just consider the Board's Facilities Work Program, rather than to adopt it as part of its Comprehensive Plan's Capital Improvement Element (CIE).

Resolution: Paragraph 9.3 of the Revised Board/County ILA now contains language providing for the County's CIE to include the Board's Work Program.

Issue 3: Inclusion of a provision that would have required any School Board initiated changes to the Facilities Work Program during any fiscal year to also be approved by the County (referred to by the County as "maintenance of effort").

Resolution: New language has been added to the end of Section 9.3 of the Revised Board/County ILA clarifying that other than as part of the School Board's annual Work Plan update and adoption, any interim action to close a school facility or to delay a project previously proposed in the first three years of the Work Plan, will not adversely affect the County's or a municipality's ability to rely on that school facility's or project's capacity for purposes of issuing school concurrency certificates. Language was also added to provide that in the event the closure of a school facility or the delay or deletion of a project proposed in the Work Plan results in the adopted Level of Service standard (LOS) being exceeded in a Concurrency Service Area (CSA) at the

conclusion of the Work Plan's five-year period, then the impacts of affected developments will be allowed to shift, unconstrained by the geographic areas' boundaries, until the LOS is again restored in the CSA.

Issue 4: Inclusion of a "takings and vested rights" provision, which in its former version, was of concern to the District as potentially opening up frivolous "takings" claims, as a way to delay or forego school concurrency determinations.

Resolution: Section 22 has been added to the Board/County ILA dealing with takings and vested rights. The language in this section has been reviewed and recommended by the School Board Attorney's Office and the Board's Special Counsel on school concurrency.

Issue 5: Definition of the ILA's effective date and term in a way inconsistent with what is provided in statute.

Resolution: Section 12 of the Revised Board/County ILA has been revised to track the governing statutes. Effective date is now defined in accordance with state law, i.e. upon the date of publication of a Notice of Intent by the State to find the ILA consistent with state law, and the conclusion of any litigation challenging the consistency determination.

Issue 6: Definition of approval process for future amendments to the ILA as one requiring only approval by the Board and the County, or approval by the Board and a majority of the non-exempt municipalities, or approval by the County and a majority of the non-exempt municipalities. This process was unacceptable as one of the three options failed to recognize the Board as an indispensable party to the implementation of school concurrency.

Resolution: Section 16 of the Revised Board/County ILA tracks the language previously approved by the Board at its May 21, 2008 meeting, which provides that future amendments to the interlocal agreement must be acted on by the Board, the County and 2/3 of all non-exempt municipalities. As previously noted, in order for this provision to become effective, it must be unanimously approved by all non-exempt municipalities.

In addition to the above listed six items, the role of charter schools in the implementation of school concurrency, has also been discussed by the District's and County's administrations; these discussions have resulted in the inclusion of language in the Revised Board/County ILA, specifically, in Section 9.2(f)6., stipulating that charter schools may be considered as a mitigation option only at the sole discretion of the School Board, and further stipulating that criteria associated with such option will be developed by the School Board.

Next Steps

As noted previously, the BCC is scheduled to take up the Revised Board/County ILA at its regular April 21, 2009 meeting and it is based on the premise that it will be approved that this item is being brought forth for School Board action. Upon approval of the Revised Board/County ILA by both bodies, District staff will prepare and forward to the non-exempt municipalities any required amendments to the Consensus ILA that may need their review and approval, since the basic tenets of school concurrency implementation must remain uniform district-wide.

A copy of the Revised Board/County ILA will be distributed to the School Board as supplemental information, and a copy will be filed with the Citizen Information Center.

RECOMMENDED: That The School Board of Miami-Dade County, Florida:

1. authorize the Superintendent and the Chair to execute the revised Interlocal Agreement for public school concurrency between the School Board and Miami-Dade County (Revised Board/County ILA), and to forward same to the State Department of Community Affairs (DCA) for review and a determination of consistency with governing statutes;
2. authorize the Superintendent to forward to all non-exempt municipalities those sections of the Revised Board/County ILA which differ from the previously approved Consensus Interlocal Agreement (Consensus ILA), in a form acceptable to the School Board Attorney, for their review and action, as may be required; and
3. authorize the Superintendent and the Chair to execute any and all required amendments to the Consensus ILA to effect such changes, including submittals to the DCA.

JGT:ARC

ATTACHMENT

Office of Superintendent of Schools
Board Meeting of July 15, 2008

July 11, 2008

Office of School Facilities
Jaime G. Torrens, Chief Facilities Officer

SUBJECT: THAT THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA:

1. NOT APPROVE THE COUNTY REVISED INTERLOCAL ON SCHOOL CONCURRENCY FOR THE REASONS NOTED HEREIN AND IN THE LEGAL MEMORANDA PREVIOUSLY DISTRIBUTED TO THE BOARD ON JULY 1 AND JULY 9, 2008, AND NOTIFY THE COUNTY ACCORDINGLY; AND
2. AUTHORIZE THE SUPERINTENDENT TO SUBMIT TO THE DEPARTMENT OF COMMUNITY AFFAIRS (DCA), IN ACCORDANCE WITH APPLICABLE STATUTES, COMMENTS AS TO WHY THE COUNTY REVISED INTERLOCAL AND RELATED COMPREHENSIVE DEVELOPMENT MASTER PLAN AMENDMENTS SHOULD NOT BE FOUND IN COMPLIANCE; AND
3. AUTHORIZE THE SUPERINTENDENT TO PROVIDE AN UPDATE TO ALL NON-EXEMPT MUNICIPALITIES

COMMITTEE: FACILITIES AND CONSTRUCTION REFORM

LINK TO STRATEGIC PLAN: IMPROVE CONSTRUCTION SERVICES

Background

As noted in memoranda distributed to the Board on July 1, 2008 and July 9, 2008, the Miami-Dade County Board of County Commissioners (BCC), adopted at a public hearing held July 1, 2008 a revised Interlocal Agreement (County Revised Interlocal), which differs from the Interlocal Agreement approved by the Board at its May 21, 2008 meeting in a number of substantive ways, namely:

1. deleting city participation from the assessment of the effect of the geographic areas on the public school concurrency system, which is a requirement inherent in statute, i.e. all parties are to participate in this process;
2. changing the language that would have required County adoption of the District's five-year capital plan into the County's capital improvement element, to a lesser standard requiring only that the County consider the plan for adoption, thus introducing a level of discretion not envisioned in the governing statutes;

3. requiring that the County also approve any changes to the School Board's five-year capital plan, which goes beyond the County's regulatory purview and infringes upon a decision-making process that falls solely under the purview of the Board;
4. re-introducing the clause that relates to possible claims of taking of property, emanating from the implementation of school concurrency, which has already been rejected by the School Board as legally objectionable;
5. changing the effective date of the County Revised Interlocal to the later of three possible events, which is inconsistent with the governing statutes since they provide that an Interlocal Agreement is in effect once the Department of Community Affairs Issues/publishes a notice to find an Interlocal Agreement is in compliance with statutes and once the statutory 21-day appeal period expires (unless challenged); and
6. allowing future amendments to the County Revised Interlocal to be adopted potentially without the School Board's participation and approval, by introducing as one of the options, approval by the County and 2/3 of the municipalities only, which has already been rejected once before by the School Board, is not in keeping with the governing statutes, and fails to recognize the Board as an indispensable party.

Additional Information

Over the objections of District representatives present at the meeting, the BCC approved all of the above summarized changes and added two other substantive changes:

- A. included a "maintenance of effort" provision in the County Revised Interlocal, that would not allow any reduction of available or planned student stations. This runs counter to governing school concurrency statutes by: 1) removing the Board's authority and sole governance over its adoption of the five-year capital plan; 2) redefining the meaning of concurrency intended in statute, which requires only that school districts achieve a pre-specified and agreed Level of Service standard over a 5-year period, and 3) potentially mandating that the School District maintain or build capacity that is no longer needed as a result of changing enrollment or other relevant conditions, unless the County agrees to the reduction in capacity; and
- B. included generic language that would leave open the door for additional mitigation options to be considered by the County in the County Revised Interlocal, which is of particular concern since this could potentially be done without the School Board's input and approval (see comment 6 above).

Given the substantive nature of the proposed additional changes approved by the BCC, some of which would infringe upon the School Board's jurisdiction, staff is recommending that the School Board not approve the County Revised Interlocal and file the appropriate objections with the DCA. A copy of the County Revised Interlocal is attached.

RECOMMENDED: That the School Board of Miami-Dade County, Florida:

1. not approve the County Revised Interlocal on school concurrency for the reasons noted above and in the legal memoranda previously distributed to the Board on July 1 and July 9, 2008, and notify the County accordingly; and
2. authorize the Superintendent to submit to DCA, in accordance with applicable statutes, comments as to why the County Revised Interlocal and related Comprehensive Development Master Plan amendments should not be found in compliance; and
3. authorize the Superintendent to provide an update to all non-exempt municipalities.

JGT:ARC