

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

**SUBJECT: PROPOSED PROMULGATION OF NEW BOARD RULE: FINAL
READING, 6Gx13- 8C-1.012, NON-PUBLIC MEETINGS OF THE
BOARD**

COMMITTEE: INNOVATION, EFFICIENCY AND GOVERNMENTAL RELATIONS

At the School Board meeting of April 22, 2009, the School Board authorized promulgation of new School Board Rule 6Gx13- 8C-1.012, Non-Public Meetings of the Board. This new rule was submitted pursuant to the School Board's approval of Agenda Item H-7 ("Initiate Rulemaking to Codify the Procedures, Provisions, Roles and Authority of the School Board's Executive Session, Attorney/Client Session and Risk Management Session"), submitted by Ms. Perla Tabares Hantman, Board Member, at its meeting of March 25, 2009.

The proposed new rule sets forth both the statutory and procedural requirements for the scheduling and holding of School Board meetings that are not open to the public pursuant to State law. The proposed rule applies to Executive Sessions, Attorney-Client Sessions, and Risk-Management Sessions held by the School Board.

The Notice of Intended Action was published in the *Miami Daily Business Review* on April 27, 2009, 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 new 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 proposed new rule.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, adopt new School Board Rule 6Gx13- 8C-1.012, Non-Public Meetings of the Board, and authorize the Superintendent to file the rule with The School Board of Miami-Dade County, Florida, to be effective, June 17, 2009.

NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on April 22, 2009, its intention to promulgate new Board Rule 6Gx13- 8C-1.012, *Non-Public Meetings of the Board* at its meeting of June 17, 2009.

PURPOSE AND EFFECT: The purpose of promulgating this rule is to establish procedures for Attorney-Client Sessions, Risk Management Sessions and Executive Sessions held by the School Board as permitted by law, and including any applicable penalties for violation thereof.

SUMMARY: The proposed rule codifies both the statutory and procedural requirements that must be followed when scheduling and conducting Attorney-Client Sessions, Risk Management Sessions and Executive Sessions held by the Board.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: 1001.41(1), (2); 1001.42(25); 1001.43(10), F.S.

LAW IMPLEMENTED, INTERPRETED, OR MADE SPECIFIC: 112.313; 119.07(3)(y); 286.011(8); 447.605; 768.28; 1001.32; 1001.41(1)(2); 1001.42(12)(l); 1012.31, F.S.

IF REQUESTED, A HEARING WILL BE HELD DURING THE BOARD MEETING OF June 17, 2009, 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 provide a proposal for a lower cost regulatory alternative as provided by Section 120.541(1), F.S., must do so in writing by May 18, 2009, 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 NEW RULE is available at cost to the public for inspection and copying in the Citizen Information Center, Room 158, 1450 N.E. Second Avenue, Miami, Florida 33132.

Originator: Ms. Perla Tabares Hantman
Date: April 13, 2009

Methods of Operation – School Board

NON-PUBLIC MEETINGS OF THE BOARD

All meetings of the School Board that are confidential and closed to the public (attorney-client, risk management session, or executive session), as permitted by law, must adhere to the requirements of the enabling statutes. The following statutory and procedural requirements shall be followed for each of the legally permitted closed meetings:

I. Attorney-Client Sessions

Confidential meetings between the School Board and its attorneys shall comply with the requirements for said meetings as delineated under Florida Statute §286.011(8), which provides in pertinent part that:

. . . (A)ny board or commission of any state agency . . . or political subdivision, and the chief administrative or executive officer of the governmental entity, may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency, provided that the following conditions are met:

(a) The entity's attorney shall advise the entity at a public meeting that he or she desires advice concerning the litigation.

(b) The subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures.

(c) The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. The court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.

(d) The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session shall commence at an open meeting at which the persons

chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending. At the conclusion of the attorney-client session, the meeting shall be reopened, and the person chairing the meeting shall announce the termination of the session.

(e) The transcript shall be made part of the public record upon conclusion of the litigation.

In addition to the aforesaid statutory requirements, all attorney-client sessions shall abide by the procedural requirements set forth herein. Within a reasonable time prior to an attorney-client session being noticed, the School Board attorney shall submit a formal written request for the attorney-client session to the Chair of the School Board. Once the date for the attorney-client session has been determined, the notice of the meeting shall be published on the meetings' page of the School Board's website, along with a notice of the meeting in a local newspaper as required by law.

Any discussions held during the attorney-client session and any materials presented at the session are confidential and may not be publicly disclosed, except as provided under §286.011(8) of the Florida Statutes.

II. Risk Management Sessions

All meetings of the School Board that qualify as Risk Management Sessions shall be governed by the requirements of § 768.28(16) of the Florida Statutes, which provides, in pertinent part that:

. . . Claims files maintained by any risk management program administered by the state, its agencies, and its subdivisions are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law. Claims files records may be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided for in this paragraph.

(c) Portions of meetings and proceedings conducted

pursuant to any risk management program administered by the state, its agencies, or its subdivisions, which relate solely to the evaluation of claims filed with the risk management program or which relate solely to offers of compromise of claims filed with the risk management program are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution. Until termination of all litigation and settlement of all claims arising out of the same incident, persons privy to discussions pertinent to the evaluation of a filed claim shall not be subject to subpoena in any administrative or civil proceeding with regard to the content of those discussions.

(d) Minutes of the meetings and proceedings of any risk management program administered by the state, its agencies, or its subdivisions, which relate solely to the evaluation of claims filed with the risk management program or which relate solely to offers of compromise of claims filed with the risk management program are exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution until termination of all litigation and settlement of all claims arising out of the same incident.

In addition to the aforesaid statutory requirements, all risk management sessions held between the School Board, its attorneys and members of the school district's Risk Management department shall abide by the procedural requirements set forth herein. The School Board Attorney shall communicate the need for a Risk Management session to the Chair of the School Board, who shall ascertain the date the meeting should be held.

Unlike attorney-client sessions, risk management sessions do not require public notice. Any discussions held during a risk management session and any materials presented at the session are confidential and may not be publicly disclosed, except as provided by 768.28 of the Florida Statutes.

III. Executive Sessions

Florida law allows public employers such as the School Board, the right to hold confidential meetings in "executive session" to discuss matters relative to collective bargaining as specified in §447.605 of the Florida Statutes, which provides, in pertinent part, that:

- (1) All discussions between the chief executive officer of

the public employer, or his or her representative, and the legislative body or the public employer relative to collective bargaining shall be closed and exempt from the provisions of s. 286.011. . .

(3) All work products developed by the public employer in preparation for negotiations, and during negotiations, shall be confidential and exempt from the provisions of s. 119.07(1).

In addition to the aforesaid statutory requirements, all executive sessions of the Board as described in the foregoing executive session section shall abide by the procedural requirements set forth herein. The Superintendent of Schools or his or her designee shall notify the School Board of the need for an executive session at the earliest practical date before the session is scheduled.

Executive sessions of the Board do not require public notice; however, the memorandum setting the date, time and purpose of the session may be publicly disseminated. Any discussions held during an executive session and any materials presented at the session are confidential, and may not be publicly disclosed.

IV. Penalties For Violation of Confidentiality of Closed Sessions

As provided by law, the sessions listed herein are confidential and closed to the public. Accordingly, all participants attending these meetings must maintain the confidentiality of the information provided at these sessions and may not disclose this information to the public. Disclosure of confidential information provided at these sessions is not in the Board's best interest and may place the Board in a disadvantageous position in either litigation or in collective bargaining. In addition, disclosure of such confidential information may lead to a violation of the Code of Ethics for Public Officers and Employees as outlined under Chapter 112 of the Florida Statutes. A complaint may shall be filed, if deemed appropriate, by the Ethics Advisory Committee with the Florida Commission on Ethics against any individual who is determined to have disclosed confidential information that was provided solely at an attorney-client session, risk management session, or at executive session. The Florida Commission on Ethics has the authority to make final determinations with regard to such complaints. Nothing contained herein shall be construed as, nor is it intended to, preclude participants at these sessions from using the information garnered in these sessions to fulfill the duties and responsibilities of their assigned administrative positions.

REVISED
PURSUANT
TO BOARD
DIRECTION
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V. Settlement Authority

As is the established practice of the Board, any settlements of civil cases that are reached as a result of an attorney-client session, and that are beyond the monetary threshold afforded to the School Board Attorney will be presented to the Board for approval. Settlements of tort cases that are reached as a result of direction given at a risk management session do not require Board authorization so long as they do not go beyond the previously established monetary thresholds.

Specific Authority: 1001.41(1)(2); 1001.42(25); 1001.43(10), F.S.
Law Implemented, Interpreted, or Made Specific: 112.313; 119.07(3)(y); 286.011(8);
447.605; 768.28; 1001.32; 1001.41(1)(2); 1001.42(12)(l); 1012.31, F.S.

History
New:

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA