

Office of School Board Attorney
Walter J. Harvey, School Board Attorney

**SUBJECT: PROPOSED AMENDMENT TO SCHOOL BOARD POLICY:
 INITIAL READING POLICY 0156, *LEGAL COUNSEL***

COMMITTEE: SCHOOL SUPPORT ACCOUNTABILITY

**LINK TO
STRATEGIC
FRAMEWORK: SCHOOL DISTRICT LEADERSHIP**

Pursuant to Agenda Item H-7 ("School Board Attorney Recommendation"), presented by Dr. Lawrence S. Feldman, Vice Chair, at the May 11, 2011 Board meeting, the Board authorized rulemaking to require that any Board agenda item seeking Board involvement in litigation must be reviewed and approved by the Board Attorney prior to agenda publication and include a statement that the Board Attorney has been consulted and agrees with or recommends the proposed action.

This item requests that the Board consider amending School Board Policy 0156, *Legal Counsel*, to require that any Board agenda item seeking Board involvement in litigation must be reviewed and approved by the Board Attorney prior to agenda publication and include a statement that the Board Attorney has been consulted and agrees with or recommends the proposed action. To more comprehensively reflect the Board Attorney's responsibilities, the item also requests that the Board approve an additional amendment to reference the Board Attorney's responsibilities pursuant to Policy 6540 relating to approval of contracts and School Board member requests for legal opinions, and to incorporate former School Board Rule 6Gx13-2C-1.13, *Legal Opinions-Requests*, addressing District staff requests for formal legal opinions.

Attached are the Notice of Intended Action and the proposed policy amendments. Changes from the current rule are indicated by underscoring words to be added and ~~striking-through~~ words to be deleted.

Authorization of the Board is requested for the School Board Attorney to initiate rulemaking proceedings pursuant to the Administrative Procedure Act to amend School Board Policy O156, *Legal Counsel*.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, authorize the School Board Attorney to initiate rulemaking proceedings pursuant to the Administrative Procedure Act to amend School Board Policy 0156, *Legal Counsel*.

NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on July 13, 2011, its intention to amend School Board Policy 0156, *Legal Counsel*, at its meeting of September 7, 2011.

PURPOSE AND EFFECT: The purpose of this action is to require that any Board agenda item seeking the Board's involvement in litigation must be reviewed and approved by the Board Attorney prior to agenda publication and include a statement that the Board Attorney agrees with or recommends the proposed action. Additional amendments add a reference to the Board Attorney's responsibilities regarding contract approval School Board member requests for legal opinions and incorporate former School Board policy regarding District staff requests for formal legal opinions.

SUMMARY: When adopted, the proposed amendments will (1) require that any Board agenda item seeking Board involvement in litigation be reviewed and approved by the Board Attorney prior to publication and include a statement that the Board Attorney has been consulted and agrees with or recommends the proposed action, (2) reference the Board Attorney's responsibilities in Policy 6540 regarding contract review, and School Board member requests for legal opinions, and (3) incorporate former School Board policy related to District staff requests for formal legal opinions.

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: 1001.32(2), 1001.41(1), (2), F.S.

IF REQUESTED, A HEARING WILL BE HELD DURING THE BOARD MEETING of September 7, 2011, 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 a proposal for a lower cost regulatory alternative as provided by Section 120.541(1), F.S., must do so in writing by August 8, 2011, to the Superintendent, 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 AMENDED POLICIES 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: Dr. Lawrence S. Feldman, Vice-Chair
Date: June 27, 2011

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Legal Counsel

The School Board may employ or retain legal counsel to render legal services as needed by the Board or Superintendent for school matters. Prior to negotiation of the employment contract, the Board shall conduct a workshop to provide guidance to the Board's designated negotiator.

The Board is also authorized to employ assistant Board attorneys and special counsel to assist the Board's attorney when, in the judgment of the Board, such assistance is necessary.

Any Board agenda item seeking Board involvement in litigation must be reviewed and approved by the Board Attorney prior to agenda publication and include a statement that the Board Attorney has been consulted and agrees with or recommends the proposed action.

All contracts to which the Board is a party shall be reviewed by the Board Attorney pursuant to Policy 6540.

School Board members may request legal opinions regarding any matter related to the District or their responsibilities as School Board members.

ADDED

District staff requests for formal legal opinions shall be limited to official District concerns and must be made to the Superintendent through the offices of the appropriate area, assistant, associate or Deputy Superintendent. The Superintendent may then forward the request to the Board Attorney. The Chief Auditor may directly request legal opinions regarding the legal expenditure of funds. All requests must be signed by the appropriate District official.

F.S. 1001.32(3)(2)

DELETED