

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

SUBJECT: FINAL **READING: PROPOSED AMENDMENT OF POLICY 0141.2,
CONFLICT OF INTEREST**

COMMITTEE: **INSTRUCTIONAL EXCELLENCE AND COMMUNITY ENGAGEMENT**

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

Pursuant to Agenda Item H-2 ("Ethics Training") presented by Ms. Perla Tabares Hantman, Board Chair, at the June 19, 2013, Board meeting, the Board authorized rulemaking to include new state ethics training requirements in Board policy. At its July 17, 2013, Board meeting, the Board approved Item G-2 incorporating the ethics training requirement in Board policy 0141.2, *Conflict of Interest*.

Under recently passed Senate Bill 2, Chapter 2013-36, Laws of Florida, all School Board members and the Superintendent are specifically required to participate annually in a four (4) hour ethics training. The law specifies the minimum content of the course and requires the Florida Commission on Ethics (FCE) to adopt rules to establish the content of the training.

The course must address the "Ethics in Government" provisions in Section 8, Article II of the Florida Constitution, Florida's Code of Ethics for Public Officers and Employees (Part III of Chapter 112, F.S.), and state public records and meeting laws. The course may also include conflicting employment or contractual relationships, misuse of position, various disclosure requirements, gifts and honoraria, post-office holding restrictions, voting conflicts, restrictions on employment of relatives and FCE processes including complaints and obtaining advisory ethics opinions.

The Notice of Intended Action was published in the *Miami Daily Business Review* on July 22, 2013, in various places for public information and mailed to various organizations representing persons affected by the amended policy and to individuals requesting notification. The time to request a hearing or protest the adoption of this amendment has elapsed.

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

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

RECOMMENDED: That The School Board of Miami-Dade County, Florida, adopt amended Policy 0141.2, *Conflict of Interest*, and authorize the Superintendent to file the amended policy in the official records of The School Board of Miami-Dade County, Florida, to be effective September 3, 2013.

G-1

NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on July 17, 2013, its intention to amend Board Policy 0141.2, *Conflict of Interest*, at its meeting of September 3, 2013.

PURPOSE AND EFFECT: The purpose of the recommended amendment is to include in the policy the statutory requirement that School Board members and the Superintendent participate in annual ethics training on state ethics provisions, public records, and public meetings laws.

SUMMARY: The amendment includes in policy a new legislative requirement that School Board members and the Superintendent participate in annual ethics training on state ethics provisions, public records, and public meetings laws.

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

LAWS IMPLEMENTED INTERPRETED OR MADE SPECIFIC: 112.3142, F.S.

IF REQUESTED, A HEARING WILL BE HELD DURING THE SCHOOL BOARD MEETING OF September 3, 2013, 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 in Section 120.54(1), F.S., must do so in writing by August 14, 2013, 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 POLICY 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, Board Chair
Date: June 19, 2013

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MEMBERSHIP

2 0141.2

Conflict of Interest

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School Board members are governed by the Code of Ethics for Public
Officers and Employees, Part III of F.S. Chapter 112 and by other
statutes in the school code. School Board members and the
Superintendent shall annually participate in four (4) hours of ethics
training as specified by law (F.S. 112.3145, 34-7.0251, C.O.E.)

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The following is a summary of the statutory mandates. They are not
definitive rules and the statute must be consulted for applicable
definitions and for exemptions.

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A. Standards of Conduct

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1. Gifts

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No Board member may either solicit or accept anything
of value - including a gift, loan, reward, promise of
future employment, favor, or service - that is based on
any understanding that the vote, official action, or
judgment of the Board member would be influenced by
such gift.

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F.S. 112.313(2)

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2. Other Prohibited Gifts

No Board member may solicit any gift, food, or beverage from a political committee or committee of continuous existence, or from a lobbyist who lobbies the Board (or the partner, firm, employer, or principal of the lobbyist), where the gift or food or beverage is for the benefit of the Board member, another Board member, or any member of the immediate family of a Board member. No Board member or any person on behalf of the Board member may knowingly accept a gift from a political committee or committee of continuous existence, or from a lobbyist who lobbies the Board (or the partner, firm, employer, or principal of the lobbyist), if the Board member knows or reasonably believes the gift has a value in excess of \$100 - unless the gift is accepted on behalf of and transferred promptly to a governmental entity or a charitable organization, or is given to the Board member by a governmental entity for a public purpose. Gifts from relatives and gifts associated primarily with the recipient's employment or business are not prohibited. Food or beverage consumed at a single sitting or event may be accepted.

F.S. 112.3148

3. Honoraria

No Board member may solicit an honorarium related to the member's public office or duties. No Board member may knowingly accept an honorarium from a political committee or committee of continuous existence, or from a lobbyist who lobbies the Board (or from the employer, principal, partner, or firm of the lobbyist). Actual and reasonable transportation, lodging, and food and beverage expenses related to the honorarium event for a Board member and spouse may be accepted.

F.S. 112.3149

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4. Unauthorized Compensation

No Board member or his/her spouse or minor child may accept any compensation, payment, or thing of value which, with the exercise of reasonable care, is known or should be known to influence the vote or official action of such Board member.

F.S. 112.313(4)

5. Doing Business with One's Agency

No Board member acting in his/her official capacity may, directly or indirectly, purchase, rent, or lease any realty, goods, or services from a business entity in which the Board member, his/her spouse, or child is an officer, partner, director, or proprietor, or in which the Board member, his/her spouse, or child (or any combination of them) owns a material interest. Nor may a Board member, acting in a private capacity, rent, lease, or sell any realty, goods, or services to the Board or any of its agencies.

F.S. 112.313(3)

6. Misuse of Public Position

No Board member may corruptly use or attempt to use his/her official position or any property or resource within his/her trust, or perform his/her official duties, to obtain a special privilege, benefit, or exemption for the Board member or others.

F.S. 112.313(6)

7. Disclosure or Use of Certain Information

No Board member may disclose or use information not available to the general public and gained by reason of his/her public position for his/her personal benefit or the benefit of others.

F.S. 112.313(8)

- 1 8. Employees Holding Office
- 2 No Board employee may be a member of the Board
- 3 while simultaneously continuing as an employee.
- 4 F.S. 112.313(10)
- 5 B. Voting Conflicts
- 6 A Board member is prohibited from voting on any matter
- 7 which would inure to his/her special private gain, or to the
- 8 special gain of a principal by whom s/he is retained, or to the
- 9 special gain of the parent organization or subsidiary of a
- 10 corporate principal by which s/he is retained, or to the
- 11 special gain of a relative or business associate. The Board
- 12 member must publicly state the nature of his/her interest,
- 13 and within fifteen (15) days file a written disclosure of the
- 14 interest with the recording secretary of the Board.
- 15 F.S. 112.3143
- 16 C. Instructional Materials
- 17 No Board member shall accept anything of value or any
- 18 inducement to introduce, recommend, vote for, or otherwise
- 19 influence the adoption or purchase of any instructional
- 20 material.
- 21 F.S. 1006.32
- 22 D. Textbooks
- 23 No Board member shall receive any gift or compensation for
- 24 promoting the sale or exchange of any schoolbook, map, or
- 25 chart in any public school, or be an agent for the sale, or the
- 26 publisher of any school textbook or reference work, or be
- 27 pecuniarily interested in the introduction of any such
- 28 textbook.
- 29 F.S. 1006.32(8)

- 1 E. No contract for supplying materials, supplies, and services
2 needed for the District school system shall be made with any
3 member of the Board, with the Superintendent, or with any
4 business organization in which any Board member or the
5 Superintendent has any financial interest whatsoever.

6 F.S. 1001.42

7 **Additional Provisions**

- 8 A. Board members shall accept no gifts from any individual,
9 firm, or business entity which the Board member has reason
10 to believe is doing business with or seeking to do business
11 with the District. Meals and admissions to events which
12 relate directly to the school system may be accepted.
- 13 B. Board members shall not participate in trips paid by a vendor
14 or potential vendor for the purpose of inspecting products or
15 programs useful to the District. Such trips, if deemed
16 necessary, shall always be made at District expense and
17 approved by the Board at a public meeting.
- 18 C. Board members, their spouses, or campaign committees shall
19 not solicit any vendor or any employee of this District to make
20 contributions to any political campaign or testimonial.
- 21 D. Board members shall not solicit nor accept personal
22 discounts on merchandise or services from individuals, firms,
23 or business entities which the Board member has reason to
24 believe are doing business with or seeking to do business
25 with this District unless those discounts are available to the
26 general public.
- 27 E. No Board member may recommend the services of any lawyer
28 or law firm, architect or architectural firm, public relations
29 firm, or any other person or firm, professional or otherwise, to
30 assist in any transaction involving the District unless the
31 recommendation is made at a public meeting of the Board.
- 32 F. Board members are prohibited from acting as an agent or
33 attorney for compensation for anyone in connection with any
34 matter in which the District is interested for two (2) years
35 after his/her Board service terminates.

Guidelines for Avoidance of Conflict of Interest

The following guidelines are intended to avoid conflicts of interests or the appearance of conflict as it relates to personal purchases or private contracting. These guidelines do not apply to purchases made in a private capacity of goods or services at a price and upon terms available to similarly situated members of the general public.

A. When entering into a transaction or contractual relationship as described above, Board members will make the following inquiries to the entity with whom they are contracting:

1. Does the business entity have a contractual relationship with the Board for more than \$500?
2. Is the contracting individual a principal or employee of an entity with a contractual relationship with the Board for more than \$500?

B. If an affirmative answer is given to either inquiry above, the Board member will request from the Board Attorney a written opinion indicating whether contracting with the individual or entity would constitute a conflict of interest pursuant to Code of Ethics for Public Officers and Employees, or other State statute or Board rule. The Board Attorney will issue a written opinion or will refer the Board member to the Florida Commission on Ethics.

C. Clarification and opinions regarding the application of the Code of Ethics for Public Officers and Employees can be obtained at any time from the Florida Commission on Ethics.