

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

SUBJECT:INITIAL **READING: PROPOSED AMENDMENTS TO BOARD POLICIES 9700, RELATIONS WITH SPECIAL INTEREST GROUPS; AND 5722, SCHOOL-SPONSORED STUDENT PUBLICATIONS, PRODUCTIONS AND PERFORMANCES**

COMMITTEE:INNOVATION, GOVERNMENTAL RELATIONS AND
COMMUNITY ENGAGEMENT

**LINK TO
STRATEGIC
FRAMEWORK: STUDENT, PARENT AND COMMUNITY ENGAGEMENT**

As you know, Section 120.74, F.S., requires each School Board to review and revise its rules as often as necessary to ensure that its rules are correct, comply with statutory requirements, and to clarify and simplify them. Pursuant to these requirements, this item is presented for the Board's consideration to amend Board policies related to the distribution of sectarian materials and student participation in sectarian performances in order to clarify certain provisions, revise the criteria for prior review, and conform to the law.

Board Policy 9700, *Relations with Special Interest Groups*, and Policy 5722, *School-Sponsored Student Publications, Productions, and Performances*, are proposed to be amended to align with constitutional law regarding the distribution in schools of sectarian and non-sectarian materials from outside groups to allow them to be available at designated pick-up locations in schools and to revise provisions related to student participation in sectarian performances. The proposed amendments also clarify the criteria for prior review of materials that are distributed in schools in order to meet constitutional requirements.

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

Authorization of the Board is requested for the Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedure Act to amend Policies 9700, *Relations with Special Interest Groups*; and 5722, *School-Sponsored Student Publications, Productions, and Performances*.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, authorize the Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedure Act to amend Policies 9700, *Relations with Special Interest Groups*; and 5722, *School-Sponsored Student Publications, Productions, and Performances*.

**REVISED
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NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on August 5, 2015, its intention to amend Board Policies 9700 *Relations with Special Interest Groups*, and 5722, *School-Sponsored Student Publications, Productions, and Performances*, at its meeting of September 9, 2015.

PURPOSE AND EFFECT: Board Policy 9700, *Relations with Special Interest Groups*, and Policy 5722, *School-Sponsored Student Publications, Productions, and Performances*, are proposed to be amended to align with constitutional law regarding the distribution of sectarian and non-sectarian materials from outside groups in schools, to allow such materials to be available at designated pick-up locations in schools, and to revise provisions related to student participation in sectarian performances. The proposed amendments also clarify the criteria for prior review of materials that are distributed in schools.

SUMMARY: Pursuant to Section 120.74, F.S., the School Board is required to review and update its rules as often as necessary. Proposed amendments to Policy 9700, *Relations with Special Interest Groups*, and Policy 5722, *School-Sponsored Student Publications, Productions, and Performances* clarify criteria for distribution of sectarian and non-sectarian materials from outside groups at schools and for student participation in sectarian performances. The proposed amendments also clarify the criteria for prior review of materials that are distributed in schools.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: 120.74, 1001.41 (1) (2),(5); 1001.42 (6), 1001.43 (10),(11), F.S.

LAWS IMPLEMENTED INTERPRETED OR MADE SPECIFIC: 1001.41 (1), (2),(5); 1001.42 (6),] Revised
1001.43 (10),(11), F.S.

IF REQUESTED, A HEARING WILL BE HELD DURING SCHOOL BOARD MEETING OF September 9, 2015, 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 31, 2015, 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, F. S.

COPIES OF THE PROPOSED AMENDED POLICIES are 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.

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RELATIONS WITH SPECIAL INTEREST GROUPS

2 Any request from civic institutions, charitable organizations, or special interest
3 groups which involve such activities as patriotic functions, contests, exhibits, sales
4 of products to and by students, sending promotional materials home with students,
5 graduation prizes, fund raising, and free teaching materials must be carefully
6 reviewed to ensure that such activities promote student interests.

7 Students, staff members, and District facilities shall not be used for promoting the
8 interests of any nonschool agency or organization, public or private, without the
9 approval of the Board or its designee. Board approval, shall not be construed as an
10 endorsement of the cause or group.

11 Pursuant to State law, a person or group may not accept a donation of public funds
12 from the District, or any person acting on behalf of the District, for a political
13 advertisement or electioneering communication concerning an issue, referendum, or
14 amendment, including any State question, that is subject to a vote of the electors.

15 A. Political Interests

16 All materials or activities proposed by outside political sources for
17 student or staff use or participation shall be reviewed by the Board
18 and Superintendent on the basis of their educational contribution to
19 part or all of the school program, and benefit to students. This
20 approval shall not have the primary purpose of advancing the
21 special interest of the proposing group.

22 The use of any type of educational material, program, or equipment
23 are not permitted in curricular, co-curricular, or extra-curricular
24 activities or at any time during the school day if they contain
25 partisan political or commercial messages. Instructional staff may,
26 however, use political materials or those provided by special
27 interest-groups in adopted courses of study with the approval of the
28 principal.

29 School facilities or equipment may not be used as a means of
30 producing or disseminating to the community any material that
31 advertises or promotes a political party, a political cause or the
32 candidacy of an individual for public office. Students and employees
33 of the Board shall not be used to distribute campaign literature
34 within the schools or on school grounds.

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1 Outside speakers representing commercial organizations will be
2 welcome only when the commercial aspect is limited to naming the
3 organization represented and the subject matter advances the
4 educational objectives of the District.

5 B. Contests

6 A contest that meets the following criteria may be advertised and,
7 where appropriate, used in conjunction with daily instruction
8 provided that it:

- 9 1. supplements, and does not interfere with, the regular school
10 program;
- 11 2. is beneficial to youth in educational, civic, social, or ethical
12 development;
- 13 3. makes it possible for individual students to work out
14 contributions by their own efforts and do not invite dishonest
15 collaboration;
- 16 4. is not commercial, controversial, or concerned with
17 propaganda;
- 18 5. follows the Board's anti-discrimination policies except the
19 restriction on sex shall not prohibit contest promotion by
20 organizations exempted from the provisions of Title IX of the
21 Education Amendments of 1972;

22 Some contests are designed to benefit the welfare of specific
23 student group, and may not meet all of these
24 nondiscriminatory provisions. Since it is not the purpose of
25 this rule to disallow these specific groups of students from
26 gaining the benefits of these contests, the Superintendent
27 may authorize Principals to notify students of their existence.
28 However, the contest may not be used in conjunction with
29 daily instruction nor shall the school assist in facilitating
30 student participation.

- 31 6. does not place an undue burden on students, teachers, or the
32 school, nor require frequent or lengthy absences of
33 participants from the schools;

- 1 7. is sponsored by an organization engaged in a creditable or
2 acceptable enterprise regardless of kind or number of prizes
3 offered and that must not use the contest or activity as a
4 "front" for advertising a company name or product;
- 5 8. emphasizes high moral standards, good citizenship, and
6 intellectual competence;
- 7 9. does not cause the participants to leave the School District,
8 unless it complies with the Policy 2340.

9 **Procedures**

10 All contests must be recommended by the District Ad Hoc Contest
11 Task Force and approved by the Superintendent. The membership
12 of the District Ad Hoc Contest Task Force shall include
13 representatives from each school level (elementary, middle, senior),
14 the Region level, the District office and the exclusive bargaining unit
15 for teachers. Additionally, a Board member shall serve as an ex-
16 officio member.

- 17 1. It shall be the duty of the District Ad Hoc Contest Task Force
18 to review all requests for contests and recommend to the
19 Superintendent those which meet the criteria established by
20 the National Contest Committee Association of Secondary
21 School Principals.
- 22 2. The list of contests approved by the Superintendent will be
23 sent to schools and notification mailed to sponsoring
24 agencies.
- 25 3. No contest of a District-wide nature that has not been
26 recommended by the District Ad Hoc Contest Task Force and
27 approved by the Superintendent shall be conducted during
28 the school year.
- 29 4. No contest shall be allowed before September 1st or after
30 April 1st unless it is a national contest that requires
31 participation at a definite time.

1 5. The deadline for accepting applications for consideration for
2 contests for the next school year shall be July 31st, but they
3 may be received any time prior to this date. Applications
4 received after this date must be reviewed and approved by a
5 committee composed of at least three (3) members of the
6 District Ad Hoc Contest Task Force and recommendation of
7 the Superintendent.

8 6. Teachers are not to screen entries for any contest unless
9 provision was made for this at the time the contest was
10 approved.

11 7. The District Ad Hoc Contest Task Force may approve or
12 disapprove the rules under which the contest is offered.

13 An Application for Contest Approval must be completed and filed by
14 the sponsoring organization or individual. These forms are available
15 in the Division of Athletics/Activities and Accreditation.

16 Approval of all contests is permissive in nature and does not obligate
17 the individual school to participate. The school must decide
18 whether the contests fit into the instructional program of that
19 particular school.

20 The sponsoring agency is responsible for distributing information to
21 the schools and promoting the contests.

22 C. Distribution/Posting of Literature

23 No outside organization, staff member, or student representing an
24 outside organization may distribute, post literature, or make
25 announcements on that organization's behalf on District property
26 either during or after school hours without the permission and prior
27 review of the Superintendent. The Superintendent will have 48
28 hours to grant or deny the request to distribute materials. When
29 deciding whether to grant or deny the request, the Superintendent
30 will be guided by the following criteria: there must not be a
31 substantial likelihood that distributing the literature will create a
32 disruption or disturbance, and the materials must not constitute or
33 support a civil or criminal wrong.

34 The Superintendent shall establish administrative procedures which
35 require that:

**THE SCHOOL BOARD OF
MIAMI-DADE COUNTY**

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- 1 1. criteria established in Policy 5722 are used to make a
2 decision regarding materials that students seek to post or
3 distribute;

- 4 2. distribution or posting of materials employees wish to
5 distribute on behalf of an employee organization comply with
6 the terms of negotiated collective bargaining agreements;

- 7 3. the District or the school mail system is not used by the
8 community, students, or staff for distribution of
9 nonschool-related materials, unless authorized by the
10 Superintendent;

- 11 4. no materials from any profit-making organization are
12 distributed for students to take home to their parents unless
13 authorized by the Superintendent;

- 14 5. flyers and notices from outside non-profit organizations may
15 be made available for students to pick-up at the literature
16 distribution rack/table by the school building's office, under
17 the following circumstances:
 - 18 a. the flyer/notice publicizes a specific community
19 activity or event that is age-appropriate for the
20 students that attend the school;
 - 21 ~~b. materials of a sectarian nature should not be accepted;~~
 - 22 be. the organization submits the number of copies of the
23 flyer that it wants placed in the literature distribution
24 rack/table;
 - 25 cd. the organization shows the building principal its
26 501(C)(3) or other proof of non-profit status, and the
27 principal confirms that the flyer/notice does not overtly
28 advocate or entice support for any religious
29 organization;
 - 30
 - 31
 - 32 No student shall be required to take any of the
33 flyers/notices placed in the literature/distribution
34 rack/table, and the rack/table shall contain a clear
35 notice that the Board does not support or endorse any
36 of the organizations and/or activities/events identified
37 in the flyers/notices.

- 38 6. the time, place, and manner of distribution of all
39 nonschool-related materials is clearly established and
40 communicated.

1 D. Solicitation of Funds

2 In order to provide its employees with the opportunity for united
3 participation in the financial support of the services performed by
4 the humanitarian agencies of this community, an annual United
5 Way of Miami-Dade County drive among school personnel is
6 approved. No other fund-raising drives may be conducted during
7 the District campaign.

8 Exceptions may be made on an individual basis, as determined by
9 the specific merits of each activity. Requests for such exceptions
10 must be approved by the Superintendent and shall be transmitted to
11 the Board.

12 E. Prizes/Scholarship

13 Acceptance of scholarships or prizes is conditioned on the following:

14 1. No information, either academic or personal, shall be released
15 from the student's record for the purpose of selecting a
16 scholarship or prize winner without the permission of the
17 student who is eighteen (18), or the parents of a student who
18 is younger according to Board policy on student records.

19 2. The type of scholarship or prize, the criteria for selection of
20 the winner, and any restrictions upon it shall be approved by
21 the principal.

22 3. The principal, together with a committee of staff members
23 designated by the principal, may be involved in the selection
24 of the recipient and, if agreeable to the sponsoring
25 organization, the selection shall be left entirely to the
26 principal and staff committee.

27 4. The acceptance of trophies, prizes, or awards from persons or
28 organizations not connected with the schools shall comply
29 with Board policy and the corresponding administrative
30 regulations providing for awards for distinguished success in
31 any school activity.

1 F. Sale of School Supplies

2 The sale of school supplies on Board owned property by
3 organizations other than the School District, may be allowed
4 pursuant to the following:

5 1. the organization has a purpose which will benefit the School
6 District and its students;

7 2. the organization's planned activities are clearly in the best
8 interest of the School District and its students;

9 3. the organization has submitted the following information and
10 assurances on the form provided by the District: a statement
11 noting the purpose of the organization, financial
12 accountability assurances, and use of facility assurances.

13 All funds generated by the sale of such school supplies shall be kept
14 separate from other activity funds or other transactions of the
15 Board.

16 G. Surveys and Questionnaires

17 Neither District-related nor nondistrict-related organizations shall
18 administer a survey or questionnaire to students or staff unless the
19 instrument and the proposed plan is submitted, in advance, to the
20 Superintendent. If approved, a copy of the results and the proposed
21 manner of their communication are to be provided to him/her for
22 review and approval before they are released.

23 Students shall not be required to complete surveys to provide
24 marketing information to vendors, or distribute to vendors any
25 personal information of students, including but not limited to
26 names, addresses, and telephone numbers, except as may be
27 required by law. In addition, the District shall not enter into any
28 contract for products or services, including electronic media
29 services, where personal information will be collected from students
30 by the providers of the services. See also Policy 2416.

1 H. Blood Collection Drive - Soliciting from Students and Staff

2 At the discretion of the principal/head administrator, schools and
3 non-school sites may participate in blood collection drives with an
4 entity to be selected by the Board through a Request for Proposal.
5 The solicitation may be conducted at all schools and non-school
6 sites under conditions that meet all of the following criteria:

- 7 1. The activity is purely voluntary with no financial
8 remuneration to the work location, student and/or staff. All
9 such participation is to be sanctioned by the principal/head
10 administrator.
- 11 2. Students, staff and community members at large who are
12 seventeen (17) years of age and older may participate in the
13 blood drive. Individuals eighteen (18) years of age and older
14 may consent to the donation of blood without parental
15 permission. Students who are seventeen (17) years old must
16 bring a written consent from the parent or guardian.
- 17 3. Donor's consent to the donation of blood shall be secured
18 using the form provided by the blood collector and approved
19 by the Office of Risk and Benefits Management.
- 20 4. Employees or students of a school or non-school site shall not
21 participate, directly or indirectly, in the process of taking
22 blood from student donors. Students may assist in minor
23 record-keeping chores and distributing refreshments.
- 24 5. The blood collector must provide sufficient trained personnel
25 to monitor the condition of the donor following the giving of
26 blood.
- 27 6. The blood collector must provide a standard certificate of
28 insurance to indemnify and hold harmless the Board, its
29 employees and representatives, from and against liability
30 arising out of or in connection with the entity conducting a
31 blood drive on school property.

1 SCHOOL-SPONSORED STUDENT PUBLICATIONS,
2 PRODUCTIONS, AND PERFORMANCES

3 Student publications, productions, performances, and speeches are means through
4 which students learn, under adult direction, the rights and responsibilities inherent
5 in the expression of ideas and information in a democratic society.

6 **Definitions**

7 School-sponsored student media shall include student publications, productions,
8 and performances which are print, performance, or web-based.

9 "Student publications" shall include any written materials, (including, but not
10 limited to, bulletin boards, banners, flyers, posters, pamphlets, notices, newspapers,
11 playbills, yearbooks, literary journals, books, and t-shirts and other school-
12 sponsored clothing), as well as all web-based communications (including, but not
13 limited to, websites, web logs ("blogs"), video or audio clips, and newsletters or
14 announcements transmitted by e-mail, wireless broadcast or other similar
15 distribution/dissemination).

16 "Publication" shall also include distribution and dissemination of a student
17 publication.

18 "Student productions" shall include vocal and theatrical performances, impromptu
19 dramatic presentations, exhibits, or any electronic media (including, but not limited
20 to, radio and television programs, podcasts, and other video or audio productions
21 that are recorded for re-broadcast or broadcast in real time using any available
22 broadcast technology).

23 "Performance" shall include student speeches, cheerleading, dance squads/drill
24 teams, band performances, school-related dance competitions, and cultural
25 performances (formal dance, popular social dance, or recreational dance) presented
26 at school-sponsored events and/or any presentation and broadcast of a student
27 production. Regular and special radio and television programs shall be consistent
28 with the goals approved by the School Board.

1 All school-sponsored student media, with the exception of those originating from
2 classrooms not otherwise directly associated with student publications and
3 productions, are limited-purpose public forums where students can address matters
4 of concern and/or interest to their readers/viewers. The student journalists and/or
5 performers involved in these publications/productions have the right to determine
6 the content of the student media. The content is open to the public at large at the
7 discretion of the student journalists/performers and may address general matters of
8 public concern.

9 School sponsors will not review or restrict the content of non-classroom
10 school-sponsored student publications or productions prior to
11 publication/performance, except with respect to unprotected speech. Sponsors are
12 responsible for guiding students in the parameters of unprotected speech and for
13 ensuring that unprotected speech does not appear in student publications or
14 productions. With editorial control comes responsibility. Student journalists and
15 performers are expected to establish and enforce standards for their
16 publications/productions that are consistent with professional
17 journalism/theatrical/broadcast standards.

18 **Student First Amendment Rights & Responsibilities**

19 The student press and student expression are essential in establishing and
20 maintaining an atmosphere of open discussion, intellectual exchange, and freedom
21 of expression at school-related functions. Student journalists, visual and
22 performing arts students, student performers, and student speakers shall be
23 afforded protection against censorship. However, in the school setting, this
24 protection must be balanced against the responsibility to maintain the safe and
25 orderly operation of schools.

26 The following speech is unprotected and prohibited in all school-sponsored student
27 publications, productions, performances, and speeches because it infringes upon
28 the rights of others and/or is reasonably likely to cause substantial disruption of or
29 material interference with school activities or the educational process: speech that
30 violates copyright law; speech that is defamatory, libelous, vulgar, lewd, or obscene;
31 speech that encourages illegal drug use and speech that otherwise violates the Code
32 of Student Conduct, Board policy, and/or State or Federal law.

33 Student publications, productions, performances, and speeches, shall be age
34 appropriate for the students who are delivering the material.

35 School sponsors may restrict speech that is grammatically incorrect poorly written,
36 inadequately researched, biased or prejudiced, or unsuitable for immature
37 audiences. All restrictions on school-sponsored speech and expression must be
38 reasonably related to a legitimate educational concern.

1 If controversial issues are introduced in school-sponsored publications, productions,
2 performances, and speeches, equal opportunity should be given to present opposing
3 viewpoints.

4 **Advertising**

5 Advertising is permitted in school newspapers, yearbooks, programs, etc. which are
6 published by student organizations. Permission should be given by the club
7 sponsor and must comply with Policy 9700.01.

8 **Outside Agencies**

9 The staffs and students of the school shall not be used to promote the interests of
10 any non-school agency, individual or organization, except that the:

11 A. schools may cooperate in furthering the work of any nonprofit
12 community-wide social service agency, provided that such
13 cooperation does not restrict or impair the educational program of
14 the schools;

15 B. schools may use film or other educational materials bearing only
16 simple mention of the producing firm, provided such materials can
17 be justified on the basis of their actual educational values;

18 C. Superintendent may, at discretion, announce or authorize to be
19 announced, any lecture, community activity, or film of particular
20 educational merit;

21 D. schools may, upon approval of the Superintendent, cooperate with
22 any agency in promoting activities in the general public interest that
23 are nonpartisan and noncommercial ~~and nonsectarian~~, when such
24 activities promote the educational or other best interests of the
25 students.

26 Some examples of activities that are prohibited include, but are not limited to,:
27 publications, productions, performances, and speeches which fail to identify the
28 student or organization responsible; soliciting funds for non-school organizations or
29 institutions when such solicitations have not been approved by the Board;
30 promoting favor or opposing any candidate for election to the Board; and the
31 adoption of any bond issue, proposal, or question submitted at any election.