

Office of Superintendent of Schools
Board Meeting of March 9, 2015

February 22, 2016

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

**SUBJECT: FINAL READING: PROPOSED AMENDMENTS TO BOARD POLICY
0133, QUASI-JUDICIAL**

**COMMITTEE: INNOVATION, GOVERNMENTAL RELATIONS AND
COMMUNITY ENGAGEMENT**

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At its meeting of January 13, 2016, the Board approved Revised Agenda Item G-1 ("Hearing Officers"), which authorized the Superintendent to initial rulemaking proceedings to amend Policy 0133, *Quasi-Judicial*, to allow student disciplinary due process cases to be heard by the Division of Administrative Hearings.

Historically, the Board has appointed local volunteer attorneys to serve as hearing officers for due process hearing requests challenging recommended alternative education assignments and expulsions. Due to a significant decrease in the number of requests for hearings over the last five (5) years and the difficulty in maintaining a list of available qualified local hearing officers, Board Policy 0133, *Quasi-Judicial*, is proposed to be amended to allow these requests to be heard by an Administrative Law Judge (ALJ) assigned by the Division of Administrative Hearings (DOAH) in accordance with Chapter 120, F.S. The amendment will continue to allow the Board to fulfill its statutory and constitutional responsibility to provide appropriate due process in student disciplinary matters. After any hearing, the ALJ will submit a recommended order to the School Board which will issue the final order. The policy is also proposed to be amended to comply with 2015 legislative changes related to the manner in which final orders are drafted and maintained and to make technical changes consistent with other Board policies.

The Notice of Intended Action was published in the *Miami Daily Business Review* on January 19, 2016, posted in various places for public information and mailed to various organizations representing persons affected by the amended policy and to individuals

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requesting notification. The time to request a hearing or protest the adoption of these amendments has elapsed.

In accordance with the Administrative Procedure Act, the 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 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.

RECOMMENDED:

That The School Board of Miami-Dade County, Florida, authorize the Superintendent to amend Policy 0133, *Quasi-Judicial*, and file it with The School Board of Miami-Dade County, Florida, to be effective March 9, 2016.

NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on January 13, 2016, its intention to amend Board Policy 0133, *Quasi-Judicial*, at its meeting of March 9, 2016.

PURPOSE AND EFFECT: Policy 0133, *Quasi-Judicial*, is proposed to be amended to allow student expulsion due process hearing requests to be heard by an Administrative Law Judge (ALJ) assigned by the Division of Administrative Hearings (DOAH). Historically, the Board has appointed local volunteer attorneys to serve as hearing officers for due process hearing requests challenging recommended alternative education assignments and expulsions. Due to a significant decrease in the number of requests for hearings over the last five (5) years and the difficulty in maintaining a list of available qualified local hearing officers, this amendment will allow the Board to fulfill its statutory and constitutional responsibilities to provide appropriate due process in student disciplinary matters. The policy is also proposed to be amended to comply with 2015 legislative changes related to the manner in which final orders are drafted and maintained.

SUMMARY: Under Sections 1001.41(1) and 1001.43(10), F.S., the School Board is responsible for adopting and revising policies necessary for the efficient operation and general improvement of the school system, including ensuring that its policies are correct, comply with statutory requirements, and conform to current practices. The proposed amendments to Policy 0133, *Quasi-Judicial*, are intended to provide an allowable alternative hearing process for student expulsions.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: 1001.41 (1), (2),(5), 1001.42 (8), 1001.43 (1),(10) F.S.

LAWS IMPLEMENTED INTERPRETED OR MADE SPECIFIC: 120.569, 120.57, 1001.41 (1),(2),(5); 1001.42 (8), 1001.43 (1),(10),1006.07(1)(a), F.S.

IF REQUESTED, A HEARING WILL BE HELD DURING SCHOOL BOARD MEETING OF March 9, 2016, 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 February 8, 2016, 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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FUNCTIONS

2 0133

Quasi-Judicial

3 The School Board may assume jurisdiction over any dispute or
4 controversy arising within the District and concerning any matter in
5 which authority has been vested in the Board by statute, contract,
6 or policy. The Board shall act as final appeal in the resolution of all
7 matters of dispute within the school system including personnel due
8 process hearings, student expulsions and alternative education
9 assignments, bid protests and charter school contract terminations
10 and nonrenewals. These appeals shall appear on the agenda in
11 order to be adjudicated by the Board.

12 | ~~F.S. 1012.22, 1012.34~~

13 **Due Process Hearings**

14 This section provides the due process request procedures for
15 adjudicatory proceedings in which the Board is a party.

16 A. Filing Timelines

17 All parties entitled to a hearing under a collective bargaining
18 agreement may file a request according to the rules and time
19 limits in the agreement. Failure to file a timely request shall
20 be deemed a waiver of the right to a hearing.

21 Students and parents/guardians of students recommended
22 for expulsion or alternative educational assignment shall file
23 a request for hearing within fifteen (15) calendar days of the
24 date of the notice of disciplinary action. Failure to file a
25 timely request shall be deemed a waiver of the right to a
26 hearing.

27 Parents or guardians of students requesting a hearing on
28 identification, evaluation, placement or the provision of a free
29 appropriate public education to exceptional education
30 students shall proceed according to the procedural
31 safeguards in Policy 2460.

1 A notice of bid protest shall be filed within seventy-two (72)
2 hours after the posting of the bid tabulation or receipt of
3 notice of the Board's decision or intended action. A formal
4 petition must be filed within ten (10) days after filing the
5 notice of protest. Saturdays, Sundays, and legal holidays
6 shall be excluded in the computation of the seventy-two (72)
7 hour time period. Failure to file a timely petition shall be
8 deemed a waiver of the right to a hearing.

9 A request for a hearing to appeal a ninety (90) day charter
10 contract termination or non-renewal must be filed by the
11 charter school governing board within fourteen (14) calendar
12 days after receiving the notice of termination. A request for a
13 hearing to appeal an immediate termination must be filed
14 within ten (10) calendar days. Failure to file a timely request
15 shall be deemed a waiver of the right to a hearing.

16 B. Filing Requirements

17 All requests for hearings must be in writing and filed with the
18 Clerk of the Board.

19 Requests for hearings on student expulsions and alternative
20 educational assignments will be granted or denied within
21 fifteen (15) calendar days of receipt. A request may be denied
22 if it is untimely or fails to meet filing requirements.

23 Requests for all hearings, including ~~on~~ student expulsions,
24 alternative education assignments, employee disciplinary
25 matters, formal petitions for bid protests, and charter
26 contract terminations and nonrenewals, must contain:

- 27 1. name and address of the petitioner;
- 28 2. explanation of substantial interests that will be
29 affected by the Board's action;
- 30 3. statement of when and how petitioner received the
31 notice of the Board decision;
- 32 4. statement of disputed issues of material fact; if there
33 are none, the request must state that there is no
34 disputed issue of material fact;

1 5. a concise statement of the ultimate facts alleged, and
2 the rules, regulations, statutes and constitutional
3 provisions which entitle the petitioner to relief; and

4 6. a description of the relief requested.

5 Hearing requests that do not comply with these conditions
6 are subject to dismissal for lack of legal sufficiency.

7 C. Proceedings

8 When a request for hearing is made, unless the Board
9 determines that it is not timely or does not meet the filing
10 requirements, the Board shall forward the request and all
11 accompanying materials to the Division of Administrative
12 Hearings ~~or local hearing officer~~ and shall notify all parties of
13 its action.

14 1. Employee discipline

15 Hearings on employee disciplinary matters shall be
16 conducted according to the appropriate collective
17 bargaining agreement.

18 2. General student expulsion and alternative education
19 assignment

20 Hearings on student expulsions and alternative
21 education assignments, ~~except for those involving~~
22 ~~students with disabilities,~~ shall be conducted by ~~local~~
23 ~~hearing officers~~ an Administrative Law Judge assigned
24 by the Division of Administrative Hearings pursuant to
25 F.S. Chapter 120.

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The Board shall provide a court reporter but the cost of preparing the hearing transcript shall be the financial responsibility of the party requesting the transcript. Students and parents who cannot afford a hearing transcript may petition the Board to pay the cost of the transcript by filing an affidavit stating that the student participates in or is eligible for the Board's free and reduced meal program. If the student is not eligible for the free and reduced meal program, the student or parent must provide an insolvency affidavit that identifies the members of the household, the total wages, benefits, or other income received by all members of the household, and the time period in which those resources are received. The Board Clerk shall verify and certify that the student is indigent according to applicable guidelines. Upon certification, the Board Attorney shall order and pay the costs of the transcript. A denial of certification may be reviewed by the Superintendent whose decision shall be final.

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Following the assignment of an Administrative Law Judge, hearing officer, the Board shall file a Notice of Specific Charges that contains:

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- a. name of student;
- b. explanation of how the student will be affected by the Board's action;
- c. statement of when and how the School Board delivered its notice of disciplinary action to student or student's parent;
- d. a concise statement of material facts, disputed or otherwise;
- e. rules, regulations, statutes and/or constitutional provisions that the Board is relying upon; and
- f. demand for relief.

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Within ten (10) business days of the date of the notice, the student or parent may submit a written answer to the Notice of Specific Charges challenging the Board's action. The Board may submit a written response to any written answer filed by the student or parent.

The ~~Hearing Officer's~~ recommended order issued by the Administrative Law Judge shall be submitted to the Board within fifteen (15) calendar days of the hearing unless another date is agreed upon.

3. Students with disabilities

Hearings on students with disabilities, including disciplinary action, shall be conducted by an Administrative Law Judge assigned by the Division of Administrative Hearings.

4. Bid protests

Hearings on bid protests shall be conducted by an Administrative Law Judge assigned by the Division of Administrative Hearings pursuant to F.S. Chapter 120.

Following receipt of a formal written bid protest, and prior to forwarding it to the Division of Administrative Hearings, the Board shall provide an opportunity to resolve the protest within seven (7) days, excluding Saturdays, Sundays and legal holidays.

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5. Charter contract terminations and non-renewals

Hearings on charter contract terminations and non-renewals shall be conducted by an Administrative Law Judge assigned by the Division of Administrative Hearings pursuant to F.S. Chapter 120. For ninety (90) day terminations and non-renewals, the hearing must take place within sixty (60) days after receipt of a request for hearing. For immediate terminations, the hearing must take place and a final order issued within sixty (60) days.

6. Other Due Process Requests and Appeals

Other types of cases may be referred to the Division of Administrative Hearings as specifically authorized in any other Board policy.

D. *Ex Parte* Communications

Pursuant to F.S. 120.66, *ex parte* communications to the Board related to the merits of any dispute governed by this policy are prohibited beginning when the Board receives the Recommended Order from the Division of Administrative Hearings or the local hearing officer, until the Board issues a Final Order. If a Board member receives an *ex parte* communication in violation of this provision, the process in F.S. 120.66(2) shall be followed.

E. Exceptions

1. For due process hearings involving students with disabilities, no exceptions are allowed. For all other hearings governed by this policy, any party may submit written exceptions to the hearing officer's recommended order within fifteen (15) calendar days of the date of the recommended order. For bid protests, exceptions must be filed within ten (10) calendar days. Failure to timely file exceptions shall constitute an acceptance of all portions of a recommended order to which exceptions have not been filed. Any party may file a written response to any exceptions filed within ten (10) calendar days from the date the exceptions were served. These timelines may be shortened for charter contract terminations and non-renewals unless the parties agree to extend the statutory deadline for issuance of a final order.

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- 1 2. All portions of the record, including the transcript and
2 proposed final orders must be filed with any
3 exceptions.
- 4 3. A written request for oral argument must be filed at
5 least seven (7) days prior to the meeting during which
6 the Board will consider the exceptions. If oral
7 argument is timely requested, each party shall be
8 provided ten (10) minutes at the Board meeting to
9 argue the exceptions.

10 F. Options Concerning Recommended Orders

- 11 1. The Board may adopt the recommended order as the
12 final order of the Board.
- 13 2. The Board may reject or modify the conclusions of law
14 and interpretations of administrative rules over which
15 it has substantive jurisdiction.
- 16 3. The Board may not reject or modify the findings of fact
17 contained in the recommended order unless the Board
18 first determines from a review of the complete record
19 and states with particularity in the order that the
20 evidence or that the proceedings on which the findings
21 were based did not comply with the essential
22 requirements of the law.
- 23 4. The Board may accept the recommended order but
24 may not substantially modify or alter it without a
25 review of the complete record. If the Board
26 substantially alters or modifies the recommended
27 order, it must state with particularity its reasons for
28 doing so and cite to the record to justify the action.
- 29 5. The Board's decision shall be based solely on the
30 record and no Board member shall consider any
31 matter not contained in the record as a basis for
32 deciding the case.

33 G. Final Order

- 34 1. The final order must be in writing and include any
35 findings of fact and conclusions of law separately
36 stated.
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- 38 2. If exceptions are heard, the Board shall enter a final
39 order that explicitly rules on each exception. The

1 Board is not required, however, to rule on an exception
2 that does not clearly identify the disputed portion of
3 the recommended order by page number or paragraph,
4 that does not identify the legal basis for the exception
5 or that does not include appropriate and specific
6 citations to the record.

7 2. The Board member presiding over the meeting at which
8 the order is adopted shall execute the final order.

9 3. Each final order shall contain a statement that judicial
10 review is available under F.S. 120.68 within thirty (30)
11 calendar days of the rendition of the final order.

12 **Indexing, Management, and Availability of Final Orders**

13 All final orders and a current subject-matter index identifying all
14 final orders shall be made available for public inspection and
15 copying, at no more than cost.

16 All final orders issued pursuant to F.S. 120.5695, 120.57 (1), (2),
17 and (3), shall be indexed and maintained in accordance with this
18 policy and Florida law.

19 All final orders shall be sequentially numbered as rendered using a
20 two-part number separated by a dash with the first part before the
21 dash indicating the year and the second part indicating the
22 numerical sequence of the order issued for that year beginning with
23 number 1 of each new calendar year. The assigned designation
24 prefix, which is "MDCPS," shall precede the two-part number.

25 **A. System for Indexing Final Orders**

26 1. The index shall be alphabetically arranged by main
27 subject headings. The applicable subject of the action
28 construed within the final order shall determine the
29 main subject headings and subheadings in the index.
30 Main subject headings shall be all capital letters and
31 shall be flush left on the page followed by relevant
32 subheadings which shall be initial caps and lower case
33 letters indented. Subheadings and sub-subheadings
34 at equal indentations shall be alphabetized. The
35 numbers of the final orders shall be listed sequentially
36 in an indentation immediately below the applicable
37 subheading. Cross references shall be used to direct
38 the user to subject headings which contain the
39 relevant information. Related key words (specific
40 words, terms, and phrases) and common and

- 1 colloquial words shall be listed and cross referenced to
2 the appropriate main subject headings.
- 3 2. The main subject headings to be used in the index are
4 as follows:
- 5 a. BID PROTESTS
- 6 b. BUSINESS SERVICES
- 7 c. EMPLOYEES
- 8 d. HEARING DENIALS
- 9 e. PROCEDURE
- 10 f. STUDENTS
- 11 3. The main subject headings shall be consulted by the
12 Board Clerk and subsequent similar entries shall be
13 indexed under the existing appropriate heading. The
14 index shall be cumulative and shall be updated and
15 made accessible to the public at least every 120 days.
16 New main subject headings will be added when
17 necessary. The index shall be cumulative for one (1)
18 calendar year.
- 19 4. The Clerk of the Board shall index all final orders.
- 20 B. Maintenance of Records
- 21 All final orders that comprise final Board action and that
22 must be indexed pursuant to this rule shall be permanently
23 maintained by the Board pursuant to the retention schedule
24 provided by law Department of State, Division of Library and
25 Information Services.
- 26 C. Plan
- 27 1. The Board shall make final orders accessible and
28 available to the public by sequentially numbering and
29 indexing all final orders. The Board shall make the
30 final orders and subject matter index available to the
31 public.
- 32 2. The Board Clerk shall assist the public in obtaining
33 information pertaining to final orders.

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3. The system or process used by the Board Clerk to search and locate all final orders is as follows:

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a. The Clerk shall enter into a computer all final orders according to subject matter.

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b. The Clerk shall search and locate final orders by consulting main subject headings, subheadings and sub-subheadings. The Clerk shall then locate the requested final order which will be filed sequentially by final order number and housed in the office of the Board Clerk.

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4. The Board maintains and stores the final orders and index in the office of the Board Clerk located in the Board Administration Building, 1450 N.E. 2nd Avenue, Miami, Florida 33132. The office of the Board Clerk is open to the public between the hours of 8:00 a.m. and 4:30 p.m., excluding holidays and weekends.

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F.S. 120.53, 120.569, 120.57, 1006.07, 1012.22, 1012.34

Revised 11/22/11

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