

Office of Superintendent of Schools
Board Meeting of July 13, 2016

PTH
7/12/16

July 12, 2016

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

SUBJECT: REVIEW OF SCHOOL BOARD DECORUM POLICY, 0169.1

COMMITTEE:

**LINK TO STRATEGIC
BLUEPRINT: INFORMED, ENGAGED AND EMPOWERED
STAKEHOLDERS**

Recent concerns have been raised regarding the legality of portions of School Board policies involving public participation and decorum (Policy 0169.1). The School Board's decorum policy has been amended numerous times and was most recently amended on September 9, 2015. Prior to initiating rulemaking to amend the policy last year, our office consulted with legal experts on the First Amendment law to ensure that any of the proposed changes to the policy were legally sound. Our experts concluded that the time, place, and manner restrictions placed on speakers during Board meetings (e.g., prohibiting speech such as slander, profanity, or speech or conduct that caused a disruption of the meeting), especially during the School Board's public hearing were appropriate, legally justified, and fulfilled their purpose.

The purpose of these decorum provisions is delineated in the policy: "The following provisions are designed to promote the orderly and efficient conduct of public meetings and not to regulate speaker content beyond the limits allowed by law." The subject provisions are content neutral and are not intended to curtail or limit speech. They are also grounded in state and federal law, particularly laws relating to public meetings and those laws that make the disruption of school board meetings a crime (See §§ 286.0114 and 877.13, Florida Statutes). These policies are also based on binding legal precedent in our circuit, which recognizes that: "The freedom of expression protected by the First Amendment is not inviolate. . . the First Amendment does not guarantee persons the right to communicate their views 'at all times or in any manner that may be desired.' *Heffron v. International Society for Krishna Consciousness*, 452 U.S. 640, 647, 101 S.Ct. 2559, 2564, 69 L.Ed.2d 298 (1981); *Adderley v. Florida*, 385 U.S. 39, 48, 87 S.Ct. 242, 246, 17 L.Ed.2d 149 (1966); *Jones v. Heyman*, 888 F.2d 1328 (11th Cir. 1989).

GOOD CAUSE

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While the purpose of these policies may be clearly enumerated in our policies, public inquiries and the continued statements by public speakers indicate that further clarification of these policies may be necessary. For these reasons, it may be pragmatic to once again review these policies and the public statements—routinely issued to speakers during the Board meeting prior to the public hearing—to ascertain whether further modification or amendments to this policy and to these public pronouncements are recommended to further clarify the intent of this policy.

This item does not appear on the published Agenda. There exists good cause to vary from the published Agenda in order to facilitate further review of these policies and to timely include any recommended changes as part of the anticipated group of policy amendments presently scheduled for the August 10, 2016 Board meeting.

RECOMMENDED:

That The School Board of Miami-Dade County, Florida, authorize further review of School Board Policies involving decorum at School Board meetings, and if recommended, authorize the Superintendent to initiate rulemaking proceedings to amend these policies at its August 10, 2016 School Board meeting.