

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

SUBJECT: INITIAL READING: PROPOSED AMENDMENTS TO POLICIES 8475, CRIMINAL BACKGROUND SCREENING OF VENDORS, INDIVIDUALS, OR ENTITIES UNDER CONTRACT WITH THE SCHOOL BOARD; 7540.02, DISTRICT WEB PAGE; 7540.05, STAFF ELECTRONIC MAIL; BYLAWS 0167.1, USE OF ELECTRONIC MAIL; 0171 REVIEW OF POLICY

COMMITTEE: PERSONNEL SERVICES AND STUDENT AND SCHOOL SUPPORT

**LINK TO
STRATEGIC
BLUEPRINT: SAFE, HEALTHY & SUPPORTIVE LEARNING ENVIRONMENT**

Consistent with the Board's statutory responsibility to periodically review and update its policies to conform to legislative changes and District practices, authorization is requested for the Superintendent to initiate rulemaking to amend Board policies 8475, *Criminal Background Screening of Vendors, Individuals, or Entities Under Contract with the School Board*; 7540.02, *District Web Page*; 7540.05, *Staff Electronic Mail*; Bylaws 0167.1, *Use of Electronic Mail*; 0171, *Review of Policy*. Many of these amendments have been recommended by NEOLA, Inc., the Board's policy consultant, and all have been drafted and reviewed by the District departments that will implement them.

Policy 8475 is being amended to clarify the process by which non-employee contractors are issued state-required badges by the District indicating that they have cleared the Level 2 screening process and requiring contractors and those who work for them to wear the badges at all times when on school campuses. The policy is also being amended to change and simplify the name from *Criminal Background Screening of Vendors, Individuals, or Entities Under Contract with the School Board* to *Criminal Background Screening of Contractors*.

Amendments to Policy 7540.02 include changing the name from *District Web Page* to *District Web Content, Services, and Apps* and other changes to emphasize that the policy applies to all web content and services/apps that may be developed by staff or students.

The Board's Policy governing staff e-mail, Policy 7540.05, *Staff Electronic Mail*, and Bylaw 0167.1, *Use of Electronic Mail*, are proposed to be amended to clarify that Board members and their staff, as authorized users of the District email system, are subject to the same restrictions as District employees. Policy 7540.05 also includes proposed amendments related to retention of emails as public records.

Finally, Board Bylaw 0171, *Review of Board Policy*, is proposed to be amended to reflect the statutory change removing the mandate that the Board complete a comprehensive review of its policies every two years and file a report with the Legislature. The Board remains legally responsible under other statutes, however, for updating its policies whenever necessary to comply with existing law and practices. It is also the Superintendent's statutory duty to recommend policy changes as often as necessary to implement state education law and the mission of the District school system.

Attached is the Notice of Intended Action and the proposed new policy and 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 Board policies 8475, *Criminal Background Screening of Vendors, Individuals, or Entities Under Contract with the School Board*; 7540.02, *District Web Page*; 7540.05, *Staff Electronic Mail*; Bylaws 0167.1, *Use of Electronic Mail*; 0171, *Review of Policy*.

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 initiate rulemaking proceedings to amend Board policies 8475, *Criminal Background Screening of Vendors, Individuals, or Entities Under Contract with the School Board*; 7540.02, *District Web Page*; 7540.05, *Staff Electronic Mail*; Bylaws 0167.1, *Use of Electronic Mail*; 0171, *Review of Policy*.

NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on January 25, 2017, its intention to amend Board policies 8475, *Criminal Background Screening of Vendors, Individuals, or Entities Under Contract with the School Board*; 7540.02, *District Web Page*; 7540.05, *Staff Electronic Mail*; Bylaws 0167.1, *Use of Electronic Mail*; 0171, *Review of Policy*, at its regular meeting on March 15, 2017.

PURPOSE AND EFFECT: Consistent with the Board's statutory responsibility to periodically review and update its policies to conform to legislative changes and District practices, amendments are being proposed to several Board policies.

Policy 8475 is being amended to clarify the process by which non-employee contractors are issued state-required badges by the District indicating that they have cleared the Level 2 screening process and requiring contractors and those who work for them to wear the badges at all times when on school campuses. The policy is also being amended to change and simplify the name from *Criminal Background Screening of Vendors, Individuals, or Entities Under Contract with the School Board* to *Criminal Background Screening of Contractors*.

Amendments to Policy 7540.02 include changing the name from *District Web Page* to *District Web Content, Services, and Apps* and other changes to emphasize that the policy applies to all web content and services/apps that may be developed by staff or students.

The Board's Policy governing staff e-mail, Policy 7540.05, *Staff Electronic Mail*, and Bylaw 0167.1, *Use of Electronic Mail*, are proposed to be amended to clarify that Board members and their staff, as authorized users of the District email system, are subject to the same restrictions as District employees. Policy 7540.05 also includes proposed amendments related to retention of emails as public records.

Board Bylaw 0171, *Review of Board Policy*, is proposed to be amended to reflect the statutory change removing the mandate that the Board complete a comprehensive review of its policies every two years and file a report with the Legislature. The Board remains legally responsible under other statutes, however, for updating its policies whenever necessary to comply with existing law and practices. It is also the Superintendent's statutory duty to recommend policy changes as often as necessary to implement state education law and the mission of the District school system.

SUMMARY: Consistent with the Board's statutory responsibility to periodically review and update its policies to conform to legislative changes and District practices, amendments are being proposed to several Board policies, including 8475, *Criminal Background Screening of Vendors, Individuals, or Entities Under Contract with the School Board*; 7540.02, *District Web Page*; 7540.05, *Staff Electronic Mail*; Bylaws 0167.1, *Use of Electronic Mail*; 0171, *Review of Policy*.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: 1001.41 (1) (2), (3), (5); 1001.42 (6), (8), (15); 1001.43 (6), (9), (10), (11); 1001.49 (3) F.S.

LAWS IMPLEMENTED INTERPRETED OR MADE SPECIFIC: 119.011, Chapter 257, Chapter 668.60, Chapter 668.701, 774.083, 775.082, 1001.43 (11), 1012.32, 1012.465, 1012.467, 1012.468

IF REQUESTED, A HEARING WILL BE HELD DURING THE SCHOOL BOARD MEETING on March 15, 2017, 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 21, 2017, 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.

1 CRIMINAL BACKGROUND SCREENING OF VENDORS, INDIVIDUALS,
2 OR ENTITIES UNDER CONTRACT WITH THE SCHOOL
3 BOARD CONTRACTORS

4 All non-instructional contractual personnel who are permitted access on school
5 grounds when students are present, including contractual personnel whose
6 performance of the contract is not anticipated to result in direct contact with
7 students, and for whom any unanticipated contact would be infrequent and
8 incidental, and those contractors who have access to or control of school funds shall
9 be subject to a criminal background check.

10 ~~Non instructional contractual personnel shall be held to the same standards as the~~
11 ~~District's employees with regard to background screening. Non instructional~~
12 ~~contractual personnel shall include any vendor, individual, or entity under contract~~
13 ~~with the School Board. For purposes of this policy a "contractor" shall mean any~~
14 ~~vendor, individual, or entity under contract with a school or with the School Board~~
15 ~~(District), but who is not otherwise an employee of the Board. The term also includes~~
16 ~~any employee of a contractor who performs services for the Board or school under~~
17 ~~the contract, as well as any subcontractor and employees of the contractor. The~~
18 ~~District shall inform these individuals that they are subject to criminal background~~
19 ~~checks. The information contained in the criminal background reports is~~
20 ~~confidential.~~

21
22 Further, every five (5) years following the initial entry into a contract with the Board
23 or a school in a capacity described above, each person who is so employed as a
24 vendor, individual, or employee of a contractor with the Board must meet Level 2
25 screening requirements.

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27 The information contained in the reports received is confidential. The District shall
28 share information received as the result of the criminal background check with other
29 school districts.

30
31 **Identification Badges**

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33 All contractors shall wear the required, state-created identification badge at all times
34 while on school grounds. The badge must bear a photograph of the contractor and
35 will be issued by the District after the District has verified that the contractor:

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37 A. is a resident and citizen of the United States or a permanent
38 resident alien of the United States as determined by the United
39 States Citizenship Immigration Service;

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41 B. is eighteen (18) years of age or older; and

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A.C. meets the statutory background screening requirements pursuant to state law and this policy.

The uniform, Statewide identification badge will be recognized by the District and must be visible at all times that a contractor is on school grounds. The identification badge is valid for a period of five (5) years.

9 Any exemptions to this policy must be approved in writing by the Office of
10 Employment Standards.

11 **Violations**

A contractor who is present on school grounds in violation of this policy, and without a valid and approved exemption, commits a third degree felony under Section 1012.32, F.S., punishable as provided in Sections 775.082 or 775.083, F.S.

12 F.S. 775.082, 774.083, 1012.32, 1012.465, 1012.467, 1012.468
13 Jessica Lunsford Act

1 | DISTRICT WEB PAGECONTENT, SERVICES, AND APPS

2 | Web sites content, services, and apps created by employees and students of the
3 | District may be created and published on the World Wide Web and/or presented for
4 | public consumption on web-enabled devices. The creation of web sites content,
5 | services, and apps by students must be done under the supervision of an
6 | instructional staff member and . ~~These web sites must reflect the professional~~
7 | ~~image of the District, its employees, and students. The content of all pages~~All
8 | content must be consistent with the Board's mission statement and is subject to
9 | prior approval of the Superintendent.

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11 | Apps/Web services are software (i.e., computer programs) that support the
12 | interaction of personal communication devices over a network, or client-server
13 | applications in which the user interface runs in a web browser. Apps/Web services
14 | are used to communicate/transfer information/data that allow students to perform
15 | actions/tasks that assist them in attaining educational achievement
16 | goals/objectives, enable staff to monitor and assess their students' progress, and
17 | allow staff to perform other tasks related to their employment. Apps/Web services
18 | also are used to facilitate communication to, from, and among and between staff,
19 | students, and parents.

20 | The purpose of such web sites, services, and apps is to educate, inform, and
21 | communicate. The following criteria should be used:

22 | A. Educate

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24 | | Content provided ~~in the web site~~ should be suitable for and usable
25 | by students and teachers to support the curriculum and the Board's
26 | objectives as listed in the Board's strategic plan.

27 | B. Inform

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29 | | Content may inform the community about the school, teachers,
30 | students, or departments, including information about curriculum,
31 | events, class projects, student activities, and departmental policies.

32 | C. Communicate

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34 | | Content may communicate information about the plans, policies,
35 | and operations of the District to members of the public and other
36 | persons who may be affected by District matters.

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- 1 | The information contained ~~on the web site~~ within web content, services, and apps
2 | should reflect and support the Board's mission statement, educational philosophy,
3 | and the school improvement process.
- 4 | When the content includes a photograph or information relating to a student, the
5 | Board will follow Policy 8330.
- 6 | All links included on the pages must also meet the above criteria and comply with
7 | State and Federal law (e.g. copyright laws, Children's Internet Protection Act).
- 8 | Under no circumstances is ~~a web site~~ content to be used for lobbying for candidates
9 | for public office, or to provide financial gains for any individual, except as the
10 | District authorizes. ~~Web pages~~ content linked from or hosted on ~~contained on~~ the
11 | District's web site also may not: (1) include statements or other items that support
12 | or oppose a candidate for public office, the investigation, prosecution or recall of a
13 | public official, or passage of a tax levy or bond issue; (2) link to a web site of another
14 | organization if the other web site includes such a message; or (3) communicate
15 | information that supports or opposes any labor organization or any action by, on
16 | behalf of, or against any labor organizations. In addition, before any statement that
17 | supports a tax referendum proposed by the District is posted on the District website,
18 | or on any web pages linked to the District web site, the Board shall adopt a
19 | resolution at a public meeting declaring that such statement serves a public
20 | purpose.
- 21 | ~~Pages~~ Web content, services, and apps should reflect an understanding that both
22 | internal and external audiences will be viewing the information.
- 23 | School web sites must be located on Board-affiliated servers.
- 24 | The Superintendent shall prepare procedures defining the standards permissible for
25 | use.
- 26 | The Board retains all proprietary rights related to the design of web sites and/or
27 | pages that are hosted on the Board's servers, along with other web content, absent
28 | written agreement to the contrary.
- 29 | Students who want their class work to be displayed on the school's web site (or via
30 | other web-based technologies) must have written parent permission and expressly
31 | license its display without cost to the Board.
- 32 | Prior written parental permission is necessary for a student to be identified by name
33 | on the school's web site, services, or apps.

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- 1 F.S. 104.31(1)(a), 110.233(2), 110.233(4), 112.313(6), 1001.32(2), 1001.42
- 2 H.R. 4577
- 3 P.L. 106-554, Children's Internet Protection Act of 2000
- 4 People Against Tax Revenue Mismanagement v. County of Leon, 583 So. 2d
- 5 1373 (Fla. 1991); Commission on Ethics: In Re: Patty Lynch, Case No.
- 6 2068EC (1994)

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STAFF ELECTRONIC MAIL

2 This policy establishes the use of the District's electronic email (e-mail) system
3 designated for use by staff and other District-authorized users and applies to any
4 and all electronic messages composed, sent or received by any authorized District
5 user. Authorized users of e-mail are employees, temporary or contract employees,
6 elected School Board members and their staff, and any other individuals or groups
7 issued District staff e-mail accounts.

8 **District E-Mail**

9 E-mail is an official means of communication within the District. The use of e-mail
10 is encouraged as a convenient, timely, and cost-effective communications medium.
11 The purpose of providing an e-mail system to District employees is to advance the
12 School Board's business needs, mission, and goals. Employees who use the District
13 e-mail services are expected to do so responsibly and to comply with Florida and
14 Federal laws, District policies and procedures, and established standards of
15 professional conduct and personal courtesy.

16 **Acceptable Use**

17 Use of District e-mail by employees must support and be consistent with District
18 objectives. All users must be aware of and understand the standards by which the
19 District expects and requires users to conduct themselves. These standards are
20 found in, among other things, the Code of Ethics for the Education Profession in the
21 State of Florida, the Principles of Professional Conduct for the Education Profession
22 in Florida, the District's Electronic-Handbook, Policy 7540.04, and the District's
23 Network Security Standards. All users must familiarize themselves with all
24 applicable standards. An employee's failure to become familiar with these guidelines
25 will not constitute a viable defense to or be a mitigating factor to a charge that an
26 employee has violated this policy.

27 **Unacceptable Use**

28 Authorized users of the e-mail system may not use the District's e-mail system to
29 perform any action or transmit any communication that would otherwise be
30 prohibited in any other medium of communication.

- 1 Unacceptable and prohibited uses of District e-mail services include, but are not
2 limited to:
- 3 A. Using profanity, obscenity, or other language which may be offensive
4 to another user or any matter deemed to be obscene.
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6 Obscene material is material which: 1) the average person, applying
7 contemporary community standards, would find, taken as a whole
8 appeals to prurient interests; 2) depicts or describes in a patently
9 offensive way, sexual conduct as defined by state law; 3) or taken as
10 a whole lacks serious literary, artistic, political, or scientific value.
- 11 B. Transmitting any material that is in violation of Federal, State, and
12 local laws, or of Board policies, regulations, or guidelines. This
13 includes, but is not limited to, material that contains statements
14 that would violate an individual's civil or constitutional rights or
15 constitute harassment or trade secrets or copyrighted material
16 without the consent of the owner or copyright holder.
- 17 C. "Spoofing" where spoofing is defined as the act of disguising the
18 sender of an e-mail by replacing the name in the "from" or header
19 fields, sending e-mails while signed on as a different user, or
20 otherwise intentionally misleading the recipient as to the identity of
21 the actual sender.
- 22 D. Sending anonymous e-mail.
- 23 E. Engaging in any activity designed to view the e-mails of other
24 individuals without authority or permission.
- 25 F. Using the District's global distribution lists for purposes that are not
26 work related.
- 27 G. Initiating or forwarding "chain-letters" or petitions.

- 1 H. Using the e-mail system for political activities. Board Policies
2 1232, Policy 3232, and Policy 4232, Political Activities, govern the
3 political activities of employees while on duty. In addition, all
4 authorized users are -use of e mail for political activities. In addition
5 to the prohibition against prohibited from using the District's e-mail
6 system to provide publicity for any candidate for public office, and
7 users are forbidden from using the District's private network for
8 lobbying, campaigning, or soliciting on behalf of any candidate for
9 public office or using e-mail to support or oppose a political or union
10 position or to engage in political or union activity. This includes
11 sending messages regarding these topics into the District's e-mail
12 system from an external e-mail account.
- 13 I. "Spamming," or the sending of unwanted, unsolicited and/or
14 unnecessary messages to large numbers of people, usually with the
15 purpose of advertising a product, event, service, or lobbying for a
16 specific political position or promoting an individual's opinion. In
17 many cases, the sender is unknown to the recipients. The District
18 has the right to block and/or remove any e-mail that it determines
19 is spam.
- 20 J. Violating Board policies, including, but not limited to, Florida's Code
21 of Ethics of the Education Profession, The Principles of Professional
22 Conduct for the Education Profession in Florida, and Board
23 Policy 1210, Policy 3210, and Policy 4210. Board members and
24 employees are expected to prevent any entity from sending political
25 e-mail into the District e-mail system in the Board or employee's
26 name.

27 **Consequences of Inappropriate Use**

28 The e-mail system is the property of the District. The District has the right to
29 monitor the e-mail system for unacceptable use according to Federal, State, local
30 and District laws, policies and rules. Any employee who violates this rule is subject
31 to appropriate disciplinary action, up to and including dismissal.

- 32 A. Work-site supervisors and District administrators are authorized to
33 determine whether an employee is in compliance with this rule and
34 is using the District's e-mail system in an appropriate and
35 acceptable manner. This includes randomly accessing the
36 employee's e-mail for the purpose of determining compliance with
37 this rule.

- 1 B. The District also has the right to:
- 2 1. review e-mails stored in the network for the purpose of
3 maintaining adequate and necessary file server space, ~~and~~
- 4 2. modify or delete e-mails or attachments that may contain
5 computer viruses or any other computer code that could
6 damage or destroy any portion of the network, and
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- 8 3. block e-mails that violate this policy.
- 9 C. Users of the District e-mail system shall not expect that e-mail
10 generated or received via the District's e-mail system will remain
11 private. Users should be aware that:
- 12 1. Sensitive and confidential data, including data considered
13 exempt from public disclosure, may be viewed by persons
14 other than the intended recipient. Information that is exempt
15 or confidential under state and federal law may need to be
16 encrypted, blocked out, or not transmitted by e-mail.
- 17 2. E-mail is legally discoverable and may be used in court
18 proceedings. Employees are notified that there is no
19 individual right to privacy in the use of the District's e-mail
20 system. Administration has an absolute right to monitor
21 employees' use of the e-mail system at its discretion. Users
22 are warned that although e-mail often has the feel of a private
23 conversation, it is in fact, not private. Further, e-mail
24 generated during the regular course of School Board business
25 is subject to public disclosure, in accordance with Florida's
26 Public Records Act, F.S. Chapter 119.

27 **Personal Use**

28 The intended use of the District e-mail system is for District-related purposes, not
29 for personal use or other purposes. In limited instances, some personal use of the
30 District e-mail system may be permitted. This use is a privilege, not a right.
31 Limited, incidental personal use of the District e-mail system such as sending short,
32 brief e-mails to a friend or relative is permissible so long as the user complies with
33 the Utilization Policy and with State and Federal laws and Board policies governing
34 the use of e-mail. Any abuse of this privilege will be handled in the same manner as
35 described above.

1 Limited incidental personal use must not tie-up or otherwise obstruct system
2 resources in any way, interfere with an individual's job performance and/or duties,
3 advertise or promote a product or service, publicize unsanctioned, non-District
4 activities without approval, promote political candidates or positions as outlined
5 above, include attachments that use excessive storage (multiple pictures, video clips,
6 etc.), and/or be used in any way that is detrimental to the District. In addition,
7 employees are prohibited from storing e-mail that is personal in nature in the
8 District's e-mail system.

9 The above list is for illustrative purposes only and is not exhaustive. Employees
10 must exercise good judgment in using the e-mail system and not abuse the privilege.

11 **Retention**

12 ~~The definition of a public record does not depend on the format of the record,~~
13 ~~regardless of the medium.—All Federal, State, and local rules and regulations~~
14 ~~regarding retention of records, memos, and documents apply to documents and~~
15 ~~materials created and transmitted by e-mail. Chapter 257, F.S., establishes the~~
16 ~~authority of the Division of Library and Information Services, Department of State,~~
17 ~~to establish and maintain the standards and guidelines for public records.~~

18 Users of District e-mail are responsible for retaining e-mail that, by law, must be
19 retained according to the minimum retention periods set by the Florida Department
20 of State General Records Schedule GS7. If a public record is maintained longer than
21 required, it remains a public record and must be produced upon request. Upon
22 termination of employment, individuals are required by law to provide their employer
23 with, and/or leave intact, any record (including e-mail) subject to the retention laws
24 and schedules. Violators may be subject to personal and/or criminal liability.
25 Official District business should not be conducted via personal e-mail accounts
26 and/or text messaging, but rather via District-issued e-mail accounts, including e-
27 mail that is subject to a litigation hold.

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29 E-mail that should be retained may be stored electronically or printed and saved as
30 a hard-copy, provided that printed copies maintain all applicable routing
31 information (e.g., To/From information) along with date/time stamps. In either
32 case, such records must be available for public access, regardless of the medium in
33 which it is they are maintained. The State and the courts do acknowledge, however,
34 that much of what is put in e-mail does not qualify as a public record and may be
35 deleted without permission once it no longer has value. Users must consult the GS7
36 schedule for required retention periods, exemptions, and other factors that may
37 influence the disposition and/or disposal of public records.

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39 Updated retention schedule information can be found at the following link:
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1 | [4 | F.S. 119.011, 257, et., seq., 257.05, 668.60, et. seq., 668.701, et. seq., 847.012](http://dos.myflorida.com/library-archives/records-management/general-records-
2 | <u>schedules/</u>
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1

MEETINGS

2 0167.1

Use of Electronic Mail

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Board members shall not use E-mail to discuss among themselves Board business that is only to be discussed in an open meeting of the Board, is part of an executive session or could be considered an invasion of privacy if the message were to be monitored by another party.

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There is no expectation of privacy for any messages sent by E-mail. Messages that have been deleted may still be accessible on the hard drive, if the space has not been occupied by other messages. Messages, deleted or otherwise, may be subject to disclosure under the Public Records Act, unless an exemption applies.

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Board members and their staff are authorized users of the District e-mail system and subject to the same restrictions as Board employees and all other authorized users under Policy 7540.05, Staff Electronic Mail.

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DUTIES

2 0171

Review of Policy

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The School Board shall periodically complete a comprehensive review of its policies and update them as necessary to comply with existing law and practices at least every two (2) years. Upon completion of this review, the Superintendent will recommend to the Board any necessary revisions.

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The Superintendent shall also recommend to the Board revisions to current policies or new policies as often as necessary.

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All such revisions and additions to Board policies shall comply with the Administrative Procedures Act.

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F.S. ~~120.74~~1001.41(1), (2), (3); 1001.43 (10), 1001.49 (3)