

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

**SUBJECT:        INITIAL READING: TO ADOPT NEW POLICY 8805, *RELIGIOUS EXPRESSION*; AND PROPOSED AMENDMENTS TO POLICIES 2270, *RELIGION IN THE CURRICULUM*; 5730, *EQUAL ACCESS FOR NON DISTRICT-SPONSORED STUDENT CLUBS AND ACTIVITIES*; 8800, *RELIGIOUS/PATRIOTIC CEREMONIES AND OBSERVANCES*; AND 8810, *THE AMERICAN FLAG***

**COMMITTEE:    PERSONNEL, STUDENT, SCHOOL, AND COMMUNITY 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 several Board policies related to religious expression and displaying the state motto. These amendments have been recommended by NEOLA, Inc., the Board's policy consultant, and all have been drafted in collaboration with, and reviewed by, the Superintendent, Cabinet, and District staff of departments that will implement them.

In 2017, the Florida Legislature approved amendments to Section 1002.206, F.S., which mandated that every school district adopt a religious expression policy developed by the Florida Department of Education (DOE). The new policy, 8805, *Religious Expression*, addresses student expression of religious viewpoints, religious clothing and accessories worn by students, student and employee engagement in religious activities, equal access to school facilities by religious student organizations, and student speakers in the public forum. In addition and in compliance with federal court decisions, employees may not be prevented from participating in religious activities on campus when they are initiated by students, are outside of school time, and do not conflict with the employee's responsibilities. Lastly, the District must establish a limited public forum for student speakers at school events open to the public. Neutral criteria must be used in selection of the student speaker and the student may not be discriminated against for his/her religious viewpoint.

Board Policy 2270, *Religion in the Curriculum*, is proposed to be amended to conform to new Policy 8805 by removing duplicative language about the treatment of students

when expressing religious beliefs through academic assignments. Amendments to Board Policies 5730, *Equal Access for Non District-Sponsored Student Clubs and Activities*, and 8800, *Religious/Patriotic Ceremonies and Observances*, are proposed in order to conform to new Policy 8805.

Finally, Board Policy 8810, *The American Flag*, adds the new statutory requirement in Section 1003.44(4), F.S., that the official motto of the State of Florida be displayed in a conspicuous place in all schools in the District and in each building used by the School Board. The title of the policy is proposed to be revised to *The American Flag and Official Motto of the State of Florida*.

Attached are the Notice of Intended Action 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 2270, *Religion in the Curriculum*; 5730, *Equal Access for Non District-Sponsored Student Clubs and Activities*; 8800, *Religious/Patriotic Ceremonies and Observances*; 8810, *The American Flag*; and to adopt new Board policy 8805, *Religious Expression*.

**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 adopt new Policy 8805, *Religious Expression*, and to amend Board Policies 2270, *Religion in the Curriculum*; 5730, *Equal Access for Non District-Sponsored Student Clubs and Activities*; and 8800, *Religious/Patriotic Ceremonies and Observances*; and, 8810, *The American Flag*.

## NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on February 13, 2019, its intention to adopt new Board policy 8805, *Religious Expression*, and amend Board Policies 2270, *Religion in the Curriculum*; 5730 *Equal Access for Non District-Sponsored Student Clubs and Activities*; 8800, *Religious/Patriotic Ceremonies and Observances*; and 8810, *The American Flag*; at its regular meeting on April 17, 2019.

PURPOSE AND EFFECT: New policy, 8805, *Religious Expression*, mandated by Section 1002.206, F.S., addresses student expression of religious viewpoints, religious clothing and accessories worn by students, student and employee engagement in religious activities, equal access to school facilities by religious student organizations, and student speakers in the public forum. Board Policies 2270, *Religion in the Curriculum*, 5730, *Equal Access for Non District-Sponsored Student Clubs and Activities*, and 8800, *Religious/Patriotic Ceremonies and Observances*, are proposed to be amended to remove provisions that are duplicative or contradictory to provisions in new Policy 8805.

Board Policy 8810, *The American Flag*, incorporates the new statutory mandate in Section 1003.44(4), F.S., that the official motto of the State of Florida be displayed in a conspicuous place in all schools in the District and in each building used by the School Board. The policy is proposed to be renamed *The American Flag and Official Motto of the State of Florida*.

SUMMARY: New policy, 8805, *Religious Expression*, mandated by Section 1002.206, F.S., addresses student expression of religious viewpoints, religious clothing and accessories worn by students, student and employee engagement in religious activities, equal access to school facilities by religious student organizations, and student speakers in the public forum. Board Policies 2270, *Religion in the Curriculum*, 5730, *Equal Access for Non District-Sponsored Student Clubs and Activities*, and 8800, *Religious/Patriotic Ceremonies and Observances*, are proposed to be amended to remove provisions that are duplicative or contradictory to provisions in new Policy 8805.

Board Policy 8810, *The American Flag*, incorporates the new statutory mandate in Section 1003.44(4), F.S., that the official motto of the State of Florida be displayed in a conspicuous place in all schools in the District and in each building used by the School Board. The policy is proposed to be renamed *The American Flag and Official Motto of the State of Florida*.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: 1001.41 (1), (2), (3); 1001.42 (6), (9), (12); 1002.206; 1003.44(4), F.S.

LAWS IMPLEMENTED INTERPRETED OR MADE SPECIFIC: 15.0301; 1002.206; 1003.44(4); F.S.

IF REQUESTED, A HEARING WILL BE HELD DURING SCHOOL BOARD MEETING OF April 17, 2019, 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 March 12, 2019, 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)

COPIES OF THE PROPOSED NEW AND AMENDED POLICIES are available at cost to the public for inspection and copying in the Citizen Information Center, Room 102, 1450 N.E. Second Avenue, Miami, Florida 33132.

**NEW POLICY**

**RELIGIOUS EXPRESSION**

The School Board will not discriminate against a student, parent, or school personnel on the basis of a religious viewpoint or religious expression.

**Student Expression of Religious Viewpoints**

- A. The District will treat a student's voluntary expression of a religious viewpoint on an otherwise permissible subject in the same manner that the District treats a student's voluntary expression of a secular viewpoint.
- B. A student may express his/her religious beliefs in coursework, artwork, and other written and oral assignments free from discrimination. A student's homework and classroom assignments shall be evaluated, regardless of their religious content, based on expected academic standards relating to the course curriculum and requirements.
- C. A student may not be penalized or rewarded based on the religious content of his/her work if the coursework, artwork, or other written or oral assignments require a student's viewpoint to be expressed.

**Religious Clothing, Jewelry, and Accessories**

A student may wear clothing, accessories, and jewelry that display a religious message or symbol in the same manner and to the same extent that secular types of clothing, accessories, and jewelry that display messages or symbols are permitted to be worn.

**Students Engaging in Religious Activities and Expression at School**

- A. A student may pray or engage in religious activities or religious expression before, during, and after the school day in the same manner and to the same extent that a student may engage in secular activities or expression.
- B. A student may organize prayer groups, religion clubs, and other religious gatherings before, during, and after the school day in the same manner and to the same extent that a student is permitted to organize secular activities and groups.

**Employees Engaging in Religious Activities and Expression at School**

- A. School personnel may not be prevented from participating in religious activities on school grounds that are initiated by students at reasonable times before or after the school day if such activities are voluntary and do not conflict with the responsibilities or assignments of such personnel.
- B. The District must comply with the Federal requirements in Title VII of the Civil Rights Act of 1964, which prohibits an employer from discriminating against an employee on the basis of religion.

**Equal Access to School Facilities**

- A. The District shall give religious groups access to the same school facilities for assembling as given to secular groups without discrimination based on the religious content of the group's expression. *See Policy 5730.*
- B. A group that meets for prayer or other religious speech may advertise or announce its meetings in the same manner and to the same extent that a secular group may advertise or announce its meetings.

**Limited Public Forum Required for Student Speakers**

The District is required to establish a limited public forum for student speakers at any school event where a student is to speak publicly. Where student speakers are permitted, the District must:

- A. provide the forum in a manner that does not discriminate against a student's voluntary expression of a religious viewpoint on an otherwise permissible subject;
- B. provide a method based on neutral criteria for the selection of student speakers at school events, activities, and graduation ceremonies;
- C. ensure that a student speaker does not engage in obscene, vulgar, offensively lewd, or indecent speech; and
- D. state in oral or written form that the student's speech does not reflect the endorsement, sponsorship, position, or expression of the School District. The District must deliver this required disclaimer at all graduation events and at any other event where a student speaks publicly.

Student expression of a religious viewpoint on an otherwise permissible subject may not be excluded from the limited public forum.

F.S. 1002.206

1

RELIGION IN THE CURRICULUM

2 Curriculum may include instruction about the religions of the world as appropriate  
3 to the various ages and educational level of the students. It is also permissible to  
4 consider religious influences on art, music, literature, and social studies. Although  
5 the District may teach about religious holidays, including their religious aspects,  
6 and may celebrate the secular aspects of holidays, schools may not observe holidays  
7 as religious events or promote such observance by students. ~~(See Policy 8800)~~

8 Students should receive unbiased instruction so they may privately accept or reject  
9 the knowledge according to their own religious beliefs. ~~(See Policies 8800 and 8805)~~  
10 ~~Students may express their religious beliefs in homework, artwork, and other~~  
11 ~~written and oral assignments free of discrimination based on the religious content of~~  
12 ~~their submissions. Home and classwork should be judged by ordinary academic~~  
13 ~~standards of substance and relevance, and against other legitimate pedagogical~~  
14 ~~concerns identified by the school.~~

15  
16 No student shall be exempted from attendance in a required course of study on the  
17 grounds that the instruction interferes with the free exercise of his/her religion.

18 | F.S. [1002.206](#),1003.45  
19 | U.S. Consti. Amend. 1

1                                    EQUAL ACCESS FOR NONDISTRICT-SPONSORED,  
2                                    STUDENT CLUBS AND ACTIVITIES

3 School Board facilities shall not be used by nondistrict-sponsored student clubs and  
4 activities or District-sponsored, noncurriculum-related clubs and activities during  
5 instructional hours. During noninstructional time, however, no group of students,  
6 regardless of the size of the group, will be denied an opportunity to meet on the  
7 basis of the religious, political, philosophical, or other content of the activity. [\(See](#)  
8 [Policies 8800, 8805\)](#)

9 An application for permission for nondistrict-sponsored student clubs and activities  
10 to meet on school premises shall be made to the Principal who shall grant  
11 permission if:

- 12            A.     the activity has been initiated by students;
- 13            B.     attendance at the meeting is voluntary;
- 14            C.     no agent or employee of the District will promote, lead, or participate  
15                 in the meeting;
- 16            D.     the meeting does not materially and substantially interfere with the  
17                 orderly conduct of instructional activities in the school;
- 18            E.     nonschool persons do not direct, conduct, control, or regularly  
19                 attend the activity.
- 20            F.     it does not require additional tax funds;
- 21            G.     is not unlawful; and
- 22            H.     admission fees are not charged during the course of the meeting.

23 A student-initiated group granted permission to meet on school premises shall be  
24 provided the same rights and access and shall be subject to the same administrative  
25 procedures that govern the meetings of student organizations sponsored by the  
26 Board, except as provided by this policy. Participation in a student-initiated meeting  
27 must be available to all students who wish to attend and cannot be denied on the  
28 basis of a student's sex, race, color, ethnic or national origin, religion, marital  
29 status, disability, genetic information, age, political beliefs, sexual orientation,  
30 gender, gender identification, social and family background, linguistic preference,  
31 pregnancy, or any other basis prohibited by law.



1 Fraternities, sororities, and secret societies are prohibited. The Superintendent may  
2 exclude nonstudents from directing, controlling, or attending any meetings of  
3 students.

4 An instructional staff member may be assigned to attend a student-initiated meeting  
5 in a custodial capacity ~~but shall not participate in the activity~~. No instructional staff  
6 member shall be compelled to attend or participate in a student-initiated meeting if  
7 the content of the speech at the meeting is contrary to his/her beliefs.

8 The principal may take necessary action to maintain order and discipline on school  
9 premises and protect the safety and well-being of students and staff members.

10 Denial by the principal of the use of school premises to any student-initiated group  
11 for the purposes of conducting a meeting during non-instructional time may be  
12 appealed to the Superintendent.

13 | F.S. [1002.206](#), 1006.14  
14 20 U.S.C. 4071 et seq., Equal Access Act of 1984  
15 42 U.S.C. 12101, et seq., Americans with Disabilities Act of 1990  
16 42 U.S.C. 2000e, Civil Rights Act of 1964

1                    RELIGIOUS/PATRIOTIC CEREMONIES AND OBSERVANCES

2 | Religious expression and activity are permitted in the schools [as outlined in Policies](#)  
3 | [2270, 5730, 8805](#) and as follows:

4            A.      Graduation prayer and baccalaureates: School officials may not  
5                    mandate or organize prayer at graduation, nor organize religious  
6                    baccalaureate ceremonies. If a school generally opens its facilities to  
7                    private groups, it must make its facilities available on the same  
8                    terms to organizers of privately sponsored religious baccalaureate  
9                    services. A school may not endorse such ceremonies.

10           B.      Official neutrality regarding religious activity: Teachers and school  
11                    administrators, when acting in those capacities, are representatives  
12                    of the State and are prohibited by the establishment clause from  
13                    soliciting or encouraging religious activity ~~and from participating in~~  
14                    ~~such activity with students~~. Teachers and administrators also are  
15                    prohibited from discouraging activity because of its religious content  
16                    and from soliciting or encouraging antireligious activity.

17           C.      Religious Literature: Students have a right to distribute religious  
18                    literature to other students on the same terms as they are permitted  
19                    to distribute other literature that is unrelated to school curriculum  
20                    or activities. Schools may impose the same reasonable time, place,  
21                    and manner or other constitutional restrictions on distribution of  
22                    religious literature as they do on nonschool literature generally, but  
23                    they may not single out religious literature for special regulation.

24           D.      Student garb: Students may wear religious attire and may not be  
25                    forced to wear gym clothes that they regard, on religious grounds, as  
26                    immodest.

27           ~~E.      The Equal Access Act: Student religious activities are allowed the~~  
28                    ~~same access to public school facilities as are student secular~~  
29                    ~~activities. See Policy 5730.~~  
30

31 District staff shall not use prayer, religious readings, or religious symbols as a  
32 devotional exercise or in an act of worship or celebration. The District shall not act  
33 as a disseminating agent for any person or outside agency for any religious or anti-  
34 religious document, book, or article.

1 The School Board shall not adopt any policy or rule respecting or promoting an  
2 establishment of religion or prohibiting any student from the free, individual, and  
3 voluntary exercise or expression of the student's religious beliefs. However, such  
4 exercise or expression may be limited to lunch periods or other non-instructional  
5 time periods when students are free to associate.

6 Observance of religious holidays through devotional exercises or acts of worship is  
7 also prohibited. Acknowledgement of, explanation of, and teaching about religious  
8 holidays of various religions is permitted. Celebration activities involving  
9 nonreligious decorations and use of secular works are permitted, but it is the  
10 responsibility of all faculty members to ensure that such activities are strictly  
11 voluntary, do not place an atmosphere of social compulsion or ostracism on minority  
12 groups or individuals, and do not interfere with the regular school program.

13 A. Religious symbols created by the children to be displayed on the  
14 public schools on a temporary basis are permitted. Children may  
15 display, upon their own person, such religious symbols as they  
16 desire.

17 B. Singing religious hymns is permitted.

18 C. Showing motion pictures which are to some degree religious in  
19 nature and which depict various religious happenings, principles,  
20 ideals, and teachings are prohibited.

21 D. The observance of religious holiday ceremonies, such as plays  
22 around Christmas time depicting the birth of Christ, and around  
23 Easter of the Crucifixion of Christ, Hanukkah ceremonies, and other  
24 religious ceremonies on school property, is prohibited.

25 E. The traditional holiday parties and symbols such as the Christmas  
26 tree, together with other decorations which are not religious in  
27 nature are permitted.

28 If a parent determines that any nonacademic activity in the public schools violates  
29 their religious conscience, the Parent shall have the right to request the release of  
30 his/her child from participating in the activity. The Principal shall grant the request  
31 and provide for the orderly care of the released child.

- 1 A brief interval of silent meditation shall be observed each day in the schools.
- 2 However, under no circumstances shall students be compelled to participate.

- 3 | F.S. 1000.06, 1002.20, [1002.206](#)
- 4 20 U.S.C. 4071 et seq.
- 5 Gregoire vs. Centennial School District 907 F.2d 1366, (3rd Circuit, 1990)
- 6 Lee vs. Weisman, 112 S. Ct. 2649, 120 L. Ed.2d 467 (1992)

# policy

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

OPERATIONS  
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1 | THE AMERICAN FLAG AND OFFICIAL MOTTO OF THE STATE OF FLORIDA

2 The Pledge of Allegiance shall be recited at the beginning of the day in every school.

3 The Pledge will be as follows, “I pledge allegiance to the Flag of the United States of  
4 America and to the Republic for which it stands, one nation under God, indivisible,  
5 with liberty and justice for all.” Students will be taught not to pause after “one  
6 nation”. Students shall stand with right hand over the heart while reciting the  
7 Pledge.

8 A student has the right not to participate in reciting the pledge. Upon written  
9 request by his/her parent, the student must be excused from reciting the pledge,  
10 including standing and placing the right hand over his/her heart. A written notice  
11 shall be published in a Student Handbook and/or the *Code of Student Conduct*.

12 School personnel:

13 A. cannot discipline a student for failing to stand and/or recite the  
14 Pledge, but

15 B. may take disciplinary action if a student materially disrupts the  
16 Pledge.

17 **Display of the Flag**

18 A. Outside

19  
20 The flag of the United States shall be raised above each school  
21 and/or at other appropriate places during all school sessions,  
22 weather permitting. The flag shall be raised before the opening of  
23 school and taken down at its close every day. The flag is to be flown  
24 at half-staff in mourning for designated principal government  
25 leaders and upon presidential or gubernatorial order.

# policy

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

OPERATIONS  
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1           B.     In the Classroom  
2

3                     Each classroom shall display a flag of the United States that is at  
4                     least two (2) feet by three (3) feet.  
5

6     **Display of the Official Motto of the State of Florida**  
7

8     The official motto of the State of Florida, “In God we Trust”, shall be displayed in a  
9     conspicuous place in all schools in the District and in each building used by the  
10    School Board.  
11

12 | [F.S. 15.0301](#)

13 | F.S. 1000.06

14 | F.S. 1001.41

15 | F.S. 1002.20(12)

16 | F.S. 1003.44(1)(4)

17 | U.S. Public Law No. 623, as amended by U.S. Public Law No. 829

18     Revised 3/15/17

19     © **NEOLA 2002**