

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

**SUBJECT:        FINAL 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**

At its meeting on February 13, 2019, the Board approved Agenda Item G-2 (Religious Expression) authorizing the Superintendent to initiate rulemaking proceedings to promulgate a new policy and amend existing policies related to religious expression and displaying the state motto to conform to legislative changes and requirements. 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.

The Florida Legislature approved amendments in 2017 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 DOE developed and provided the policy late in the fall of 2018. The proposed 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*.

The Notice of Intended Action was published in the *Miami Daily Business Review* on February 19, 2019, and posted in various places for public information and mailed to various organizations representing persons affected by the new and amended Policies and to individuals requesting notification. The time to request a hearing or protest the adoption of this new policy and other policy amendments has elapsed.

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.

**RECOMMENDED:**

That The School Board of Miami-Dade County, Florida, adopt new Policy 8805, *Religious Expression*, and amendments to 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*, and authorize the Superintendent to file the new and amended policies with The School Board of Miami-Dade County, Florida, to be effective on April 17, 2019.

## 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.

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 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

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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

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

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

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

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F.S. 15.0301

F.S. 1000.06

F.S. 1001.41

F.S. 1002.20(12)

F.S. 1003.44(1)(4)

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

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Revised 3/15/17

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