

Financial Services
Mr. Ron Y. Steiger, Chief Financial Officer

**SUBJECT: INITIAL READING: PROPOSED AMENDMENT TO POLICY 8150,
*LOBBYISTS***

COMMITTEE: FISCAL ACCOUNTABILITY & GOVERNMENT RELATIONS

LINK TO STRATEGIC

BLUEPRINT: EFFECTIVE AND SUSTAINABLE BUSINESS PRACTICES

This item requests that the Board authorize the Superintendent to initiate rulemaking proceedings to amend Policy 8150, *Lobbyists*, to include additional language for definition of lobbyist; registration requirements and appropriate fees.

Attached are the Notice of Intended Action and the 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 adoption of proposed amendments to School Board Policy 8150, *Lobbyists*.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, authorize the Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedures Act to amend School Board Policy 8150, *Lobbyists*.

E-141

NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on June 17, 2020 its intention to amend Board Policy 8150, *Lobbyists*, at its regular meeting on August 12, 2020.

PURPOSE AND EFFECT: Amendments are proposed to Policy 8150, *Lobbyists*, to include additional language of definition of lobbyist, registration requirements and appropriate fees.

SUMMARY: Policy 8150, *Lobbyists*, is proposed to be amended to include additional language of definition of lobbyist, registration requirements and appropriate fees.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: 1001.41(1), (2); (4); 1001.43(2) F.S.

LAW IMPLEMENTED, INTERPRETED, OR MADE SPECIFIC: 1001.41(12), F.S.

IF REQUESTED, A HEARING WILL BE HELD DURING THE BOARD MEETING of August 12, 2020, which begins at 1:00 p.m., in the School Board Administration Building, 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 by Section 120.541(1), F.S., must do so in writing by July 14, 2020 to the Superintendent of Schools, 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.

A COPY OF THE PROPOSED AMENDED POLICY is available at cost to the public for inspection and copying in the Citizen Information Center, Room 102, 1450 Northeast Second Avenue, Miami, Florida 33132.



Book	Policy Manual
Section	March 18, 2020 - <u>Initial</u> Reading
Title	LOBBYISTS
Code	8150
Status	Initial Reading
Adopted	May 11, 2011

8150 - LOBBYISTS

Responsible government requires that the fullest opportunity be afforded to the people to petition the Board and the District to express freely their opinions on Board actions and issues. To preserve and maintain the integrity of the governmental decision-making process, the identity, expenditures, fees, interests and activities of certain persons who engage in efforts to influence actions of Board members and employees either by direct or indirect communication shall be publicly and regularly disclosed.

Definitions

- A. "Lobbyist" means all persons, firms or corporations employed or retained by a principal who seeks to encourage the passage, defeat, or modification of any action, decision of the Superintendent during the time period of the entire decision-making process on such action, decision or recommendation which foreseeably will be heard or reviewed by the School Board, or who is employed and receives payment from, or who contracts for economic consideration with, any principal, person or organization for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity. For purposes of this rule, the term "Lobbyist" specifically includes the principal as well as any agent, officer, or employee of a principal regardless of whether they are employees of the principal whose normal scope of employment does not include lobbying activities.

A principal includes (1) the president of a corporation, (2) the owner, president or chief shareholder of a corporation or an individual who has been designated or who has the apparent authority to make final decisions on behalf of the corporate entity who is engaged in lobbying activities, or (3) a member of the corporate board engaged in lobbying who has been appointed by the corporation to serve as its representative during negotiation or lobbying activities.

- B. One who is not an employee of a principal is a "lobbyist" if s/he is retained as an independent contractor or otherwise for payment or economic consideration by a person or governmental entity to lobby an agency on behalf of that person or governmental entity.

If a corporation, partnership, firm, or other business organization is retained for payment or economic consideration to lobby on behalf of another person or governmental entity, only the members, partners, associates, or employees of the entity who personally lobby on behalf of that person or governmental entity are "lobbyists."

C. The terms "payment" or "economic consideration" do not include receiving only reimbursement for actual travel, lodging, and meal expenses.

D. A lobbyist is not:

1. a person representing school allied groups, e.g., Parent Teacher Association (PTA); Educational Excellence School Advisory Councils (EESAC); bargaining units; etc.;
2. an attorney retained to represent individuals or entities in quasi-judicial proceedings; expert witnesses providing information in a public meeting; or representatives of non-profit organizations who only appear at meetings without compensation;
3. an attorney, or any person, who represents a client in a judicial proceeding or in a formal administrative proceeding conducted pursuant to Chapter 120 or any other formal hearing before the Board, a committee, or administrative law judge;
4. an employee of a governmental entity or of a legislative, judicial or executive branch entity acting in the normal course of his or her duties;
5. a confidential informant who is providing, or seeks to provide, confidential information to be used for law enforcement purposes;
6. a public officer, employee or appointee who only appears in his or her official capacity;
7. a person who only appears in his or her individual capacity for the purpose of self-representation without compensation or reimbursement, whether direct, indirect or contingent, to express support of or opposition to any item.
8. a person who appears as a representative for an individual or firm for an oral presentation before a District evaluation, selection, technical review or similar committee.

E. "Lobbying" means any oral or written communication, direct or indirect, with the Board, members of the Board, Board Committees, Board administrative assistants, Board Attorneys, or members of the District administrative staff, including site administrators and instructional staff for the purpose of doing business with the School District, the Board and/or schools, influencing any official action, non-action, or decision or attempting to obtain the good will of a Board member or employee of the School District.

Registration

Prior to any lobbyist or principal conducting any lobbying, each principal must file a form with the Board Clerk, signed by the principal or the principal's duly authorized representative, stating that the lobbyist is authorized to represent the principal. Failure of a principal to file the required form may preclude them from participating in the evaluation and selection of the proposal and been deemed non-responsive on that basis~~be considered in the evaluation of a bid, proposal or prequalification criteria as evidence that a proposer or bidder is not a responsible contractor~~. Each principal shall file a form with the Board Clerk at the time at which a lobbyist is no longer authorized to represent the principal.

The following individuals must register as lobbyists: (1) a principal of a corporation if they are lobbying; (2) an employee of the principal who lobbies; (3) sales representatives who appear before the Board or District staff to encourage purchase of a product are seeking approval of new products and services; (4) attorneys meeting with District personnel during the procurement process, unless the communication is strictly limited to legal matters and not intended to influence the decision.

Any communication related to anything other than the process or procedure regarding an RFP, ITB, RFQ, ITN with the Board Clerk or District staff requires lobbyist registration.

A person who appears as a representative for an individual or firm when requested by the District to make an oral presentation before a District evaluation, selection, technical review or similar committee is not required to register

as a lobbyist but must complete an affidavit which shall be filed by staff with the Board Clerk's office at the time the proposal is submitted. The listed members of the presentation team shall not be required to pay any registration fees. No person shall appear before any committee on behalf of an individual or firm unless they have been listed as part of the firm's presentation or are registered with the Clerk's office as a lobbyist and have paid the fee.

A. Forms

Lobbyists shall annually complete a Lobbyist Registration Form providing the following information:

1. Name
2. Business phone
3. Mailing address
4. Principal represented
5. Principal's business address and telephone number
6. The subject matters which the lobbyist seeks to influence; and
7. Any current member of the Board or District administrative staff, Board administrative assistant, or Board Attorney, with whom the lobbyist or his/her principal has any direct business association.

All lobbyists shall register with the Office of the Board Clerk within five (5) business days of being retained as a lobbyist or before engaging in any lobbying activities, whichever comes first. Every person required to register shall:

- a. Register on forms prepared by the Clerk;
- b. State under oath his/her name, business address and the name and business address of each person or entity which has employed the registrant to lobby.
- c. Identify the corporation, if the lobbyist represents a corporation. The lobbyist shall also identify all persons employed by the Board holding, directly or indirectly, a five (5) percent or more ownership interest in the corporation, partnership, or trust.
- d. File a form with the Clerk prior to conducting any lobbying, on behalf of all principals.
- e. List all individuals who may make a presentation when the person appears as a representative for an individual or firm for an oral presentation before a site administrator, or instructional personnel, or certification, evaluation, selection, technical review or similar oral presentation committee. This listing shall include:
 1. the Clerk's form;
 2. the list of presenters; and
 3. the indication of fee receipt.

Staff shall transmit this listing to the Clerk's office prior to the oral presentation. For the purpose of this subsection only, the listed members of the presentation team shall not be required to pay any registration fees. No person shall appear before any employee or committee on behalf of an individual or firm unless ~~they are~~~~he or she has been~~ listed as part of the firm's presentation team pursuant to this paragraph or ~~unless are~~~~he or she is~~ registered with the Clerk's office and ~~has~~~~es~~ paid all applicable fees.

- f. File an appropriate notice of withdrawal on behalf of each person who withdraws as a lobbyist for a particular client. Each principal shall also file a form with the Clerk of the Board at the time the lobbyist is no longer authorized to represent the principal.

The Clerk shall publish logs on an annual basis reflecting the lobbyist registrations which have been filed in accordance with this subsection. All logs required by this rule shall be prepared in a manner substantially similar to the logs prepared for the Florida Legislature pursuant to F.S. 11.045.

B. Business Interests

In addition to the information above, every registrant shall be required to state the extent of any business, financial, familial or professional relationship, or other relationship with any current member of the Board or District administration who is sought to be lobbied as identified on the lobbyist registration form filed.

C. Filing

1. The lobbyist registration form shall be filed by the lobbyist with the Office of the Board Clerk by July 1st of each year, or when an individual becomes a lobbyist. Registration must be renewed by July 1st of each subsequent year or lapse. A separate registration form must be filed for each principal represented. Under no circumstances will any lobbyist be permitted to address the Board at public meetings until the Lobbyist Registration Form is filed. Further, members of the Board, District administration, Board administrative assistants, school administrators and staff and Board Attorneys will not discuss Board business with a lobbyist who is meeting to influence purchasing decisions or Board action until the lobbyist has registered.
2. Fee. The fee for annual registration shall be \$250.00, deposited by the Board Clerk into an account, and expended for recording, transcribing, administration and other costs incurred in maintaining these records for availability to the public. There shall be no fee required for filing a notice of withdrawal. The Superintendent may waive or reduce the registration fee upon a finding of financial hardship. Any principal that has been certified by the District as a Small/Micro and or Minority/Woman Business Enterprise in accordance with Policy 6320.02 may register up to two (2) lobbyists for the annual registration fee of \$250.00.

D. Prohibited Use

No information obtained from lobbying statements required by this article shall be sold or used by any person for the purpose of soliciting campaign contributions or fund-raising or for commercial purposes.

E. Duty of Personnel

All members of the Board, and all District personnel, shall make every effort to determine whether persons required to register have complied. Board members or District personnel may not knowingly permit a person who is not registered to lobby the Board, the relevant committee, or District employee.

Reporting Requirements

On July 1st of each year lobbyists shall submit to the Board Clerk an Expenditure Report under oath listing all Board lobbying expenditures in excess of twenty-five dollars (\$25.00) for the preceding calendar year. A statement shall be filed even if there have been no expenditures during the reporting period. A separate statement shall be filed for each principal represented. The statement shall list in detail each expenditure by category, including but not limited to, food and beverage, entertainment, research, communication, media advertising, publications, travel, lodging, and special events.

Prior to any lobbyist or principal engaging in any lobbying, each principal must submit to the Board Clerk a statement under oath disclosing the terms and amount of compensation paid, and to be paid, by each principal to the lobbyist with regard to the specific Board matters on which the lobbyist has been engaged to lobby. A statement must be filed even if no compensation has or will be paid concerning the lobbying services.

The Clerk shall notify any lobbyist who fails to timely file an expenditure report. In addition to any other penalties which may be imposed, any lobbyist who fails to file the required expenditure report by September 1st shall be automatically suspended from lobbying until all fees are paid unless a review of the fine has been appealed to the Ethics Advisory Committee.

Each principal and lobbyist has a continuing duty to supply accurate information and amend registration and reports when necessary.

Prohibited Activities

Except for a principal's authorized sales or account representatives, no person shall accept employment as a lobbyist on a basis which makes that person's compensation contingent in any manner upon the approval, rejection, or modification of any action, non- action or decision of the Board; Board members; Board Committee; District administrative staff; Board administrative assistants, school site administrators, or Board Attorneys. "Contingency fee" means a fee, bonus, commission, or nonmonetary benefit as compensation which is dependent on or in any way contingent on the passage, defeat, or modification of: (1) a resolution, action or decision of the Board; (2) any action, decision or recommendation of the Superintendent or committee; or (3) any action, decision or recommendation of District personnel during the time period of the entire decisionmaking process regarding such action, decision or recommendation which foreseeably will be heard or reviewed by the Board or staff.

Sales/account representatives are full or part time employees of a principal whose primary purpose or responsibility is to promote and sell the principal's products or services.

A person or employee, agent, representative, officer, or director of a firm, partnership, company, or other entity submitting or intending to submit a written sealed bid, response, or reply to a competitive solicitation is prohibited from lobbying any District staff, Board member, or person selected to evaluate or recommend a contract award during the cone of silence as defined in Policy 6325, *Cone of Silence*.

Investigations

The Inspector General may investigate, or the Ethics Advisory Committee may request an investigation concerning any person engaged in lobbying activities who may be in violation of this rule.

Penalties

If a violation is found to have been committed, the Ethics Advisory Committee may make recommendations to the Board that prohibit the person from lobbying before the Board, any committee or District personnel and may adopt reports by the Inspector General or District personnel in support of its findings and recommendations.

The Board may impose suspensions up to a period of two years from the date of determination of the violation or according to the following schedule:

- A. 1st violation: for a period of ninety (90) days from the date of determination of violation;
- B. 2nd violation: for a period of one (1) year from the date of determination of violation;
- C. 3rd violation: for a period of two (2) years from the date of determination of violation.

The above schedule is to be used as a guideline and does not limit the School Board's ability to impose a penalty that is more or less severe based on the facts of each particular case or violation.

Effective 7/1/11

Legal

F.S. 1001.41(1)(2)(5), 1001.42(15)(25), 1001.43(10)