

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

**SUBJECT:** **INITIAL READING: PROPOSED AMENDMENTS TO SCHOOL BOARD POLICIES 6320, *PURCHASING*, AND 0133, QUASI-JUDICIAL PROCEEDINGS**

**COMMITTEE:** **FISCAL ACCOUNTABILITY & GOVERNMENT RELATIONS**

**LINK TO STRATEGIC PLAN: EFFECTIVE & SUSTAINABLE OPERATIONAL PRACTICES**

Authorization is requested for the Superintendent to initiate rulemaking proceedings to amend Board Policies 6320, *Purchasing*, and 0133, *Quasi-Judicial Proceedings*. The policies are recommended for revision to align the policy language with current practices and statutes. The revisions to Policy 6320, *Purchasing*, provide clarification about filing bid protests. The revisions to Policy 0133, *Quasi-Judicial Proceedings*, provide clarification about requirements for bid protests, as well as other matters that may be brought before the Florida Division of Administrative Hearings under Chapter 120 of Florida Statutes (“Administrative Procedure Act”) and other statutes. The revisions also clarify which hearings result in quasi-judicial proceedings before the Board. Finally, the policy revisions restructure and clarify the content of existing procedures.

These policy amendments were drafted in collaboration with, and reviewed by, the Superintendent, Cabinet, and District staff.

Attached are the Notice of Intended Action and policy revisions. 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:

Authorize the Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedure Act to amend School Board Policies 6320, *Purchasing* and 0133, *Quasi-Judicial Proceedings*.

## **NOTICE OF INTENDED ACTION**

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on July 20, 2022, its intention to amend Board Policies 6320, *Purchasing*, and 0133, *Quasi-Judicial Proceedings*, at its meeting of September 7, 2022.

**PURPOSE AND EFFECT:** Board Policies 6320, *Purchasing*, and 0133, *Quasi-Judicial Proceedings*, are recommended for revision to align the policy language with current law and practice related to bid protests and other administrative hearings.

**SUMMARY:** The policies are recommended for revision to align the policy language with current practices and statutes. The revisions to Policy 6320, *Purchasing*, provide clarification about filing bid protests. The revisions to Policy 0133, *Quasi-Judicial Proceedings*, provide clarification about requirements for bid protests, as well as other matters that may be brought before the Florida Department of Administrative Hearings under Chapter 120 of Florida Statutes (“Administrative Procedure Act”) and other statutes. The revisions also clarify which hearings result in quasi-judicial proceedings before the Board. Finally, the policy revisions restructure and clarify the content of existing procedures.

**SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED:** Fla. Stat. ss. 1001.41 (1), (2), (5); 1001.42; 1001.43(6), (10).

**LAWS IMPLEMENTED INTERPRETED OR MADE SPECIFIC:** Fla. Stat. Chap. 120; Fla. Stat. ss. 255.0516; 255.0158; 1002.33(8); 1003.57(1)(c); 1006.07; 1012.22; 1012.33-1012.335; Fla. Admin. Code Ch. 28-106, Ch. 28-110; Fla. Admin. Code r. 6A-6.03311; 29 U.S.C. s. 794.

IF REQUESTED, A HEARING WILL BE HELD DURING SCHOOL BOARD MEETING OF September 7, 2022, 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 August 16, 2022, 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 AMENDED POLICY 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.



Book	Policy Manual
Section	July 20, 2022 - <u>Initial</u> Reading
Title	PURCHASING
Code	6320
Status	<u>Initial</u> Reading
Adopted	May 11, 2011
Last Revised	October 20, 2021

#### 6320 - **PURCHASING**

All procurement of supplies, materials, equipment, and services paid for from county school funds shall be the responsibility of the procurement department under the general supervision of the Chief Procurement Officer and shall be made in accordance with all applicable State statutes, Florida State Board of Education Rules, School Board policies, and administrative procedures.

No person may make any purchase with Board funds unless authorized to do so by Board policy or by administrative directive, or manuals approved by the Superintendent.

The agency designated for making purchases with Board funds is the Board's Procurement Management Services.

Payment for any unauthorized purchase(s) may be the responsibility of the person placing the order.

#### **I. Definitions**

- A. *Commodity Code* - system of words, numbers, or both, designed to identify and list goods and services by classes and subclasses.
- B. *Competitive Solicitation* - purchasing made through the issuance of an invitation to bid, request for proposals, and invitation to negotiate.
- C. *Construction Services* - all labor, services, and materials provided in connection with the construction, alterations, repair, demolition, reconstruction, or any other improvements to real property.
- D. *Cooperative Purchasing* - action taken when two (2) or more entities combine their requirements to obtain advantages of volume purchases including administrative savings and other benefits. Cooperative procurement efforts may result in contracts that other entities may "piggyback".
- E. *Invitation to Bid* - a written solicitation for competitive sealed bids used when the Board is capable of specifically defining the scope of work for which a contractual service is required or when the Board is capable of establishing precise specifications defining the actual commodity or group of commodities required.
- F. *Invitation to Negotiate* - a written solicitation for competitive sealed replies to select one (1) or more vendors with which to negotiate for the procurement of commodities or contractual services used when the Board determines that negotiations may be necessary to receive the best value.
- G. *Originating Department* - the department requesting informal and/or formal solicitations. This department is responsible for the product and/or services sought and for monitoring vendor performance.

- H. *Purchasing Cards (PCards)* - a payment method in which School District requisitioners purchase directly from a vendor using a credit card; a pre-established credit limit is generally established for each card issued.
- I. *Procurement Authority* - documentation establishing that a purchase requisition, PCard, fund reservation, or draft contract adheres to the competitive bidding process or meets criteria for an exemption in this policy.
- J. *Proposer* - vendors submitting bids or responses to a competitive solicitation.
- K. *Request for Information* - a non-binding method whereby a jurisdiction publishes via newspaper, internet, or direct mail its need for input from interested parties for an upcoming solicitation. A procurement practice used to obtain comments, feedback, or reactions from potential suppliers (contractors) prior to issuing of a solicitation. Generally, price is not required. Feedback may include best practices, industry standards, technology issues, etc.
- L. *Request for Proposals* - a written solicitation for competitive sealed proposals used when it is not practicable for the Board to specifically define the scope of work for which the commodity, group of commodities, or contractual service is required and when the Board is requesting that a responsible vendor propose a commodity, group of commodities, or contractual service to meet the specifications of the solicitation document.
- M. *State Appropriated Funds* - funds appropriated in the Florida General Appropriations Act, excluding Federal funds; does not include general obligation bond funds for capital construction or funds raised through local capital outlay millage.
- N. *Unauthorized Purchases* - an agreement, a commitment, or an order for goods or services, construction, or changes to existing contracts, by any person who does not have an approved purchase order, fund reservation, and/or PCard approval, and includes (1) purchases made without the required competitive bidding, (2) purchases made in advance of an approved purchase order, fund reservation, and/or PCard approval, and (3) changes under existing contracts made by a person who does not have delegated procurement authority.
- O. *Vendor File* - accumulated record of a vendor maintained by Procurement Management Services, including information on the vendor's relationship with the Board, application for inclusion on the bidder's list, record of performance under contracts, and correspondence.
- P. *Small Business Enterprise (SBE), Micro Business Enterprise (MBE), Minority/Women Business Enterprise (M/WBE), and Veteran Business Enterprise (VBE)* are defined by Board Policy 6320.02.

## II. Purchase Approval and Competitive Bidding Process Requirements

### Responsibilities

The Superintendent shall be responsible for the procurement of supplies, materials, equipment, and services paid for from Board funds. The several schools, departments, and agencies of the District under the jurisdiction of the Board shall purchase their materials or commodities through the Procurement Management Services, the Board's official purchasing agency. All purchases shall comply with law, rules, regulations, and Board policies. The Superintendent may approve or reject purchase requisitions when the total amount does not exceed \$50,000 or the current threshold set by statute. Purchases in excess of \$50,000 or current threshold set by statute shall be approved by the Board except for those delineated below:

- A. Where the purchasing agent for any public agency is authorized by law to make purchases for the benefit of other governmental agencies within the county, the Board shall have the option to purchase under the current contracts as established for these public agencies at or below the stated unit price, if the purchase is economically advantageous to the Board, and the items purchased conform to the standards and specifications prescribed by the Superintendent.
- B. As required by F.S. 1001.42(12)(j), the Board shall receive and consider available prices according to the rules of the Department of Management Services, Division of Purchasing. The Board may use prices established by the Division of Purchasing through its State purchasing agreement price schedule. If Board policy provides for purchasing under this State purchasing program, the conditions for use shall be those imposed on State agencies.
- C. In lieu of requesting competitive solicitations from three (3) or more sources, the Board may make purchases at or below the specified prices from contracts awarded by other city or county governmental agencies, other school boards, community colleges, Federal agencies, the public or governmental agencies

of any state, or from State university system cooperative bid agreements, when the proposer awarded a contract by another entity permits purchases by a school board on the same terms, conditions, and prices (or below such prices) awarded in the contract, and the purchases are economically advantageous to the Board.

D. The requirement for requesting competitive solicitations for commodities or contractual services from three (3) or more sources is waived pursuant to F.S. 1010.04(4)(a), for:

1. the purchase by the Board of professional services which shall include artistic services, academic program reviews, lectures by individuals, auditing services not subject to F.S. 218.391, legal services, including attorney, paralegal, expert witness, court reporting, appraisal or mediator services; and health services involving examination, diagnosis, treatment, prevention, medical consultation or administration; procurements which render competitive bidding impractical; and
2. the purchase by the Board of educational services and copyrighted materials including educational tests, textbooks, printed instructional materials, computer software, films, filmstrips, videotapes, DVDs, disc or tape recordings, digital recordings, or similar audio-visual materials, and for library and reference books, and printed library cards where these materials are purchased directly from the producer or publisher, the owner of the copyright, an exclusive agent with the State, a governmental agency or a recognized educational institution. Purchases for computer applications and software purchases that are not content-based (i.e., contain intellectual content for student instruction) and exceed \$5,000,000 per contract must be formally competitively bid.

E. Additional exemptions authorized under certain conditions:

The requirements for requesting competitive solicitations and making purchases for commodities and contractual services are waived pursuant to F.S. 1010.04(4)(a), when the following conditions have been met by the Board:

1. competitive solicitations have been requested in the manner prescribed by this rule, and
2. the Board has made a finding that no valid or acceptable firm proposal has been received within the prescribed time.

When such a finding has been officially made, the Board may enter into negotiations with suppliers of such commodities and contractual services and shall have the authority to execute contracts with such vendors under whatever terms and conditions the Board determines are in its best interests.

If fewer than two (2) responsive proposals for commodity or contractual services are received, the Board may negotiate the best terms and conditions or decide to reject all proposals. The Board shall document the reasons that negotiating terms and conditions with the sole proposer is in the best interest of the School District in lieu of soliciting new proposals.

F. Commodities or contractual services available from a single source may be exempted from the competitive solicitation requirements. When the Board believes that commodities or contractual services are available only from a single source, the Board shall electronically or otherwise publicly post a description of the commodities or contractual services for a period of at least seven (7) business days. The description must include a request that prospective vendors provide information regarding their ability to supply the commodities or contractual services described. If it is determined in writing by the Board, after reviewing any information received from prospective vendors, that the commodities or contractual services are available only from a single source, the Board shall provide notice of its intended decision to enter a single source contract in the manner specified in F.S. 120.57(3), and may negotiate the best terms and conditions with the single source vendor.

G. A contract for commodities or contractual services may be awarded without competitive solicitations if State or Federal law, a grant or a State or Federal agency contract prescribes with whom the Board must contract or if the rate of payment is established during the appropriations process.

H. A contract for regulated utilities or government-franchised services may be awarded without competitive solicitations.

I. Except as otherwise required by statute, the Board, when purchasing insurance, entering risk management programs, or contracting with third party administrators, may use the competitive solicitation process or direct negotiations and contract.

J. The Board may dispense with requirements for competitive solicitations for the emergency purchase of commodities or contractual services when the Superintendent determines in writing that an immediate

danger to the public health, safety, or welfare or other substantial loss to the School District requires emergency action, pursuant to F.A.C. 6A-1.012(12)(e). After the Superintendent makes such written determination, the Board may procure commodities or contractual services necessitated by the immediate danger, without requesting competitive solicitations. However, such an emergency purchase shall be made by obtaining pricing information from at least two (2) prospective vendors, which must be retained in the contract file, unless the Superintendent determines in writing that the time required to obtain pricing information will increase the immediate danger to the public health, safety, or welfare or other substantial loss to the District.

- K. Emergency purchases made and approved by the Superintendent or the Superintendent's designated representative. The Superintendent will report all emergency purchases to the Board, as soon as possible.

When an emergency arises, circumstances contributing to such an emergency shall be communicated to the proper department or agency of the Board, which in turn will notify Procurement Management, requesting the emergency purchase.

A requisition for an emergency purchase shall be accompanied by the appropriate Emergency Purchase Request Form, explaining the circumstances creating the emergency and clarifying that immediate action is required to protect the Board's interests. Emergency purchases are divided into two (2) categories as follows:

1. Emergency Purchase Request (Form B FM-3739) estimated expenditure \$50,000 and under requires the signature of the initiating administrator, recommended by Director or above and approval by the Assistant Superintendent or above.
2. Emergency Purchase Request (Form A FM-2333) estimated expenditure over \$50,000 requires the signature of the initiating administrator, recommended by the Assistant Superintendent or above, or his/her designee(s) and approval by Superintendent or designee. Emergency purchases over \$50,000 shall be reported to the Board.

- L. Competitive bidding is waived for purchases of maintenance and/or service contracts, on various types of technical equipment, that are offered and/or supplied only by the original manufacturer or its representative, or that are required to maintain the integrity of the manufacturer's warranty, or that are part of the manufacturer's rental/lease/lease purchase agreements terms and conditions.

- M. Non-Purchase Order Invoice Funds Reservation Purchases/Check Requests are purchases for goods and services, expenditures, fund transfers, etc., that are not appropriate for normal competitive purchasing procedures. Periodically, these purchases shall be reviewed by procurement staff to ensure compliance with this Board policy. Only the expenditures listed below will be authorized and processed as Non-Purchase Order Invoice Funds Reservation/Check Requests Purchases. Non-Purchase Order Invoice Funds Reservation/Check Requests purchases require the same financial authorization and approval process as purchase requisitions and shopping carts. Those purchases for goods and services, expenditures, fund transfers, etc., that are authorized for Non-Purchase Order Invoice Funds Reservation/Check Requests Purchases are limited to include various types of fund advances, services, reimbursements and purchases, and/or payment for goods and services, which are not appropriate for normal competitive purchasing procedures:

1. additional services where a professional service contract is not required or there is no bid in place (polygraph, transcribing, etc.)
2. employee related admission/registration fees to workshops and conferences that are not expensed to out-of-county travel (all out-of-county travel must be entered through and approved by the travel system process)
3. association fees, professional association dues, academy certification requirements and District membership to organizations
4. internal distribution of funds to school athletic programs, vending machine commissions, diplomas, and savings programs
5. District rental/lease of facilities
6. all utility service, connection charges, and fees
7. graduation program fees (non-employees, union charges, etc.), including facility rental, equipment requirements, foliage rental, non-employees, and union charges

8. tickets, and admissions to parks, registration fees for competitions, and hotel accommodations, not done through a travel agency
  9. groceries and supplies for educational use in alternative programs or academic requirements
  10. media advertising (newspaper, radio, television, brochures, pamphlets, etc.)
  11. grant authorized workshop reimbursements including refreshments
  12. petty cash replenishment
  13. postage requisitions
  14. toll charges for authorized District departments
  15. travel reimbursement for non-employees
- N. Contracts for legal services by the Board attorney and the attorneys supervised by the Board attorney, contracted third party claims administration, nonpublic school placements and other services/goods for which selection procedures are provided by State statute, State Board rule, or other Board policy.
- O. The Professional Services Contract Committee (PSCC) may consider requests for exceptions from competitive bidding. The PSCC shall be comprised of representatives, as stated in the attendee requirements for an evaluation committee. The PSCC may grant exceptions for sole source contracts, contractors having specific expertise, or as otherwise determined by the PSCC to be in the best interest of the Board. The PSCC will be used in extenuating circumstances only. For contracts with an annual estimated cost of more than \$50,000, exceptions recommended by the PSCC must be approved by the Board.
- P. Procurement Management Services staff will provide the Board a quarterly written expenditure report of purchases made using the exemptions above and that exceed \$100,000.00. The report shall include date of purchase, vendor, amount, funding source, and purchasing authority.
- Q. The Board shall have the authority to reject any or all proposals submitted in response to any competitive solicitation and to request new proposals or purchase the required commodities or contractual services in any other manner authorized by this section.
- As much as practicable, all purchases shall be based on contracts, purchasing card systems, electronic procurements, or purchase orders.
- R. The Board, when acquiring, whether by purchase, lease, lease with option to purchase, rental or otherwise, information technology, as defined in F.S. 282.0041, may make acquisitions through the competitive solicitation process or by direct negotiation and contract with a vendor or supplier, as fits the needs of the School District as determined by the Board.
- S. The Superintendent may be authorized to purchase commodities or contractual services where the total amount does not exceed an amount prescribed by the Board and does not exceed the applicable appropriation in the District budget. The Superintendent may also be authorized to purchase commodities or is exempt by statute or Florida Administrative Code, or contractual services under Department of Management Services State term contracts. The Superintendent may authorize designated staff to perform these purchasing tasks.
- T. In accordance with State law and Policy 6327, *Public-Private Partnerships and Unsolicited Proposals*, the Superintendent may submit proposed public-private partnership agreements for qualifying projects, including those resulting from unsolicited proposals, to the Board for consideration. The Superintendent and Board shall evaluate and consider all proposed public-private partnership agreements according to the guidelines in F.S. 255.065 and Policy 6327.

### III. Competitive Bidding Requirement

#### A. Invitation to Bid (ITB)

Invitation to Bid may be used when the Board is capable of specifically defining the scope of work for which a contractual service is required or when the Board is capable of establishing precise specifications defining the actual commodity or group of commodities required.

The following process shall be followed for an ITB:

1. For contracts estimated to be more than \$50,000 annually:
  - a. In accordance with Board Policy 6320.02, the Goal Setting Committee (GSC) shall review the summary scope of work to determine incentives to be applied under the supervision of Procurement Management Services for vendors certified by the District Office of Economic Opportunity (OEO).
  - b. The ITB shall be advertised to solicit maximum vendor participation. To enhance SBE, MBE, M/WBE, or VBE participation, advertisements may be published and announced in major publications that serve minority communities; however, it shall be posted electronically.
2. The ITB shall include an implementation schedule consisting of the following:
  - a. GSC meetings;
  - b. mailing/posting date;
  - c. pre-proposal conference (if required);
  - d. opening date and time documented by bid opening minutes;
  - e. evaluation and tabulation of bid;
  - f. recommendation of award process to the Board; and
  - g. award notification is provided to all awarded bidder(s).
3. The Board may accept the proposal of the lowest responsive, responsible proposer. Alternatively, the Board may award contracts to the lowest responsive, responsible bidder as the primary awardee of a contract and to the next lowest responsive, responsible bidder(s) as alternate awardee(s) from whom commodities or contractual services would be purchased should the primary awardee become unable to provide all of the commodities or contractual services required by the Board during the term of the contract. Multiple awards to the lowest responsive and responsible bidders are permitted when multiple awards are clearly allowed by the bid solicitation documents. Also, awards shall be made to preapproved vendor(s), where price is not an evaluation factor and bidders are responsive to other factors noted within the solicitation document.
4. When the determination is made that a bid is appropriate, the performance specifications and standard requirements shall be stated in detail and shall be furnished to Procurement Management Services by the originating department. After review, Procurement Management Services shall issue the invitation to bids, including all general and special conditions, and evaluate the bids submitted. The requirements for solicitation and review of bids by the Goal Setting Committee (GSC) shall be followed in all cases. Board approval is required for contracts recommended for award.
5. For each purchase of more than \$50,000, bids shall be noticed publicly to ensure open competition. Notices of bids shall be electronically posted or may be sent to all vendors on the active vendor mailing list(s) per commodity code(s). This list shall include all SBE, MBE, M/WBE, or VBE vendors, identified by the Board in accordance with Policy 6320.02, for that particular category of goods or services, as well as organizations involved in assisting SBE, MBE, M/WBE, or VBE. Notices of bids shall be advertised in one (1) or more major local newspapers or electronically posted at least seven (7) days prior to the bid opening date. This may include, as necessary, major newspapers having circulation representative of the various relevant minority classifications or electronic posting. Tabulations of current bids shall be retained in bid files and shall be available for reference. Standard bid forms used shall be those reviewed and approved by the Board attorney's office.
6. Any additional evaluation criteria, such as small or micro-business enterprise, minority and/or veteran preferences that are referenced in the solicitation document shall be reviewed and evaluated.

**B. Request for Proposals (RFP)**

The Board may award contracts to one (1) or more responsive, responsible proposers in accordance with the selection criteria published in the request for proposal. The Board is not required to solicit request proposals for purchases made from contracts of the Department of Management Services.

The RFP shall be used when it is not practicable for the Board to specifically define the scope of work for which the commodity, group of commodities, or contractual service is required and when the Board is requesting that a responsible vendor propose a commodity, group of commodities, or contractual service to meet the specifications of the solicitation document.

In acceptance of responses to requests for proposals, district school boards may award contracts to one or more responsive, responsible proposers in accordance with the selection criteria published in the request for proposal. The district school board is not required to request proposals for purchases made from contracts of the Department of Management Services.

The following process shall be followed for an RFP:

1. For contracts estimated to be more than \$50,000 annually:
  - a. In accordance with Board Policy 6320.02, the GSC shall review the summary scope of work to determine incentives to be applied under the supervision of Procurement Management Services for vendors certified by the District OEO.
  - b. The RFP shall be advertised to solicit maximum vendor participation. To enhance SBE, MBE, M/WBE, or VBE participation, advertisements may be published and announced in major publications that serve minority communities and it shall be posted electronically.
2. The RFP shall include an implementation schedule consisting of the following:
  - a. GSC meetings,
  - b. mailing/posting date,
  - c. pre-proposal conference (if required),
  - d. opening date and time documented by bid opening minutes,
  - e. oral presentations (if required),
  - f. recommendation of award process and to the Board,
  - g. award notification is provided to all awarded bidder(s).
3. The evaluation criteria shall include, but are not limited to:
  - a. technical qualifications and conformance to the proposal requirements experience,
  - b. past performance,
  - c. price considerations,
  - d. small or micro-business, minority, and/or veteran business participation, and
  - e. other instructions specific to RFP.

#### C. Invitation to Negotiate

The Invitation to Negotiate (ITN) shall be used as a written solicitation for competitive sealed replies to select one or more vendors with which to commence negotiations for the procurement of commodities or contractual services. This method is used when the Board determines that negotiations may be necessary to receive the best value. The following but not limited to criteria may be used to determine if an ITN is the best procurement methodology:

1. The District cannot accurately and completely define the scope of work for the contract, which often occurs for acquisitions of rapidly changing technology, outsourcing, or complex services;
2. The goods or services can be provided in several different ways, any of which could be acceptable, which occurs for acquisition of emerging technologies or complex services;
3. Contractor qualifications and the quality of the goods or services to be delivered can be considered more important than the contract price;

4. The responses may contain innovative solutions that differ from what the District may have requested and this process allows for those types of alternatives to be considered; and
  5. The responses may contain a different level of goods or services than that requested, requiring the negotiation to reduce price or services to match.
- Invitations to Negotiate shall follow the process noted above for RFPs.

D. Evaluation Committee Meetings for RFPs and ITNs Only

1. The committee shall consist of at least: 1) two (2) individuals from the originating department; however, not more than one (1) of these individuals can be from the requesting office; 2) two (2) individuals from outside the requesting department; 3) one (1) individual from the Office of Economic Opportunity; and 4) one (1) individual from Procurement Management Services (non-voting). Additional members may be appointed at the discretion of the Chief Procurement Officer. The committee shall to the extent possible, be ethnically and gender representative.
2. These meetings are subject to F.S. Chapter 286 except for meetings in which the vendors will be making oral presentations and answering questions as part of the solicitation process which shall be closed to the public in accordance with F.S. 286.0113(2)(b)(1).
3. When committees are established to evaluate a RFP or ITN, the Procurement Management Services staff will conduct the meetings, and ensure that: 1) minutes are recorded, and 2) proper documentation and records of committee actions are maintained.
4. The evaluation committee's written recommendation must include the following for inclusion in the master bid file within Procurement Management Services:
  - a. clear objective of the RFP,
  - b. identification of the committee members,
  - c. committee meeting dates and brief synopsis of the general discussion,
  - d. dates of any or all oral presentations,
  - e. name and location of the offeror(s),
  - f. evaluation criteria,
  - g. explanation of the basis for selection,
  - h. recommendation of acceptance of the offeror(s) proposal,
  - i. committee member votes or tabulation results.
5. When the committee evaluation process is complete, the Superintendent will forward the recommendations to the Board for approval before any contract will be issued.

E. Written or Electronic Quotations (Request for Quotes)

For each purchase of \$50,000 or less and over the minimum quotation threshold established by Procurement Management Services, staff shall obtain written, telephone, or electronic quotations from three (3) or more sources. If possible, vendors contacted shall include businesses certified by the District OEO. If only one (1) of the three (3) contacted sources respond with prices, two (2) additional sources, if available, may be contacted for pricing, including, if possible, businesses certified by the District OEO. If no additional prices are obtained from those sources, the award shall be made to the vendor who submitted the lowest and best price quotation. If all three (3) of the vendors first contacted for prices respond with valid price quotations, the award shall be made to the vendor who submitted the lowest price quotation meeting the bid specifications, with no additional requests from other vendors required.

Quotations obtained shall be electronically attached to or included with the purchase order. by written notations or electronic reference indicating quotation prices and sources, certification by signature or facsimile. The requisition shall be approved for purchase as authorized by the Superintendent. All internal fund purchases shall comply with Policy 6610.

#### F. Purchasing Thresholds for Competitive Bidding

The following provides a summary of the purchasing thresholds and the corresponding procurement documents allowed to facilitate the purchases:

1. \$0 to \$999 - shall obtain one (1) written/dated quotation with an expiration date.
2. \$1,000 to \$50,000 - shall obtain three (3) written, telephonic, or electronic and dated quotation(s), which may be completed using a Request for Quotes template.
3. Above \$50,000 shall utilize the Invitation to Bid, Invitation to Negotiate, or the Request for Proposal template(s).

#### G. Development of Specifications, Determination of Quantities, and Standardization of Supplies and Equipment

1. To achieve both quality control and the price advantages of quantity purchasing, the administration shall:
  - a. establish specifications for goods and services as needed;
  - b. identify several existing, commercially available "standard brands" that meet the specifications acceptable as examples; and
  - c. invite vendors to bid on the standard brands identified or their equivalent.
2. All bid quantities and specifications shall be transmitted to Procurement Management Services by the originating department in writing. The originating department shall also certify to Procurement Management Services in writing that the specifications for an existing bid (to be rebid) are still appropriate before issuance of the bid. Specifications originated by Procurement Management Services shall follow similar certification procedures.
3. All increases to quantities specified in an existing term bid requiring a supplemental bid award shall be requested in writing by the originating department, countersigned by an administrator reporting directly to the Superintendent, and identifying the reason why the increase in quantities was unavoidable. If an adequate reason cannot be identified, then the corrective action to be taken by the originating department to prevent a future underestimate of quantities shall be described. A similar procedure will be followed for term bids originated by Procurement Management Services.
4. All changes to specifications for an existing bid (to be rebid) or similar bid shall be identified in writing, including the reason for the change, by the originating department or Procurement Management Services if it is the originator.
5. The Chief Procurement Officer of Procurement Management Services shall identify specifications which appear to limit the bidding process to a single vendor. In the event that the Chief Procurement Officer has identified such a set of specifications, the originating department shall be required to justify in writing the specifications which appear to favor a single vendor. This documentation shall be countersigned by an administrator reporting directly to the Superintendent.

#### H. Federal Grants/Funds

Procurement of all supplies, materials, equipment, and services paid for from Federal funds or District matching funds shall be made in accordance with Board Policy 6320.07 and all applicable Federal, State, and local statutes and/or regulations, the terms and conditions of the Federal grant, School Board policies, and administrative procedures.

The Superintendent shall have and use a procurement and contract administration system in accordance with the requirements of 2 C.F.R. 200.317-200.326 for the administration and management of Federal grants and Federally-funded programs. The District shall maintain oversight that requires contractors to perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Except as otherwise noted, procurement transactions shall conform to the provisions of this policy.

The District shall take affirmative steps, in accordance with Federal regulations, to assure that firms certified pursuant to Board Policy 6320.02, and applicable labor surplus area firms, are used when possible.

The District shall comply with any limitations or exclusions set forth as cost principles in 2 C.F.R. Part 200 or in the terms and conditions of the Federal award.

Domestic Preference for Federal Procurement:

As appropriate and to the extent consistent with law, the District shall, to the extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. Such requirements shall be included in all subawards including all contracts and purchase orders for work or products under the Federal award.

I. Purchase Requisitions

District schools, departments, and agencies shall initiate a properly executed purchase requisition, containing authorized approvals of the originating administrator, principal, department or agency head, for the purchase of any and all items desired, except where small purchases, transactions not in excess of \$3,000.00 per requisition, and market difficulties, make the cost of some purchases in this manner economically unsound. In those instances, administrative directives or operating manuals may be issued, when deemed necessary, containing the procedures to economically perform the purchasing function within the controls required and authority provided by Florida statute, Florida Board of Education Administrative Rules and Board policies.

Split requisitions, to bypass the approval requirements and/or the bidding process, are specifically forbidden.

Requisitions must contain the appropriate authorized approvals as prescribed by administrative procedures for the SAP system, as well as documented procurement authority. Fully approved requisitions will be reviewed and approved by procurement staff to ensure proper application of this policy and will be converted to approved purchase orders for release to the vendors.

J. Unauthorized Purchases

As defined, unauthorized purchases are agreements, commitments, or an order for goods or services or construction, or changes to existing contracts by any District staff and/or school site staff who does not have an approved purchase order, fund reservation and/or PCard approval. Also unauthorized are (1) purchases made without the required competitive bidding, (2) purchases made in advance of an approved purchase order, fund reservation and/or PCard approval, and (3) changes under existing contracts made by a person who does not have delegated procurement authority.

Unauthorized purchases are not binding on the District. Payment for any unauthorized purchase may be the responsibility of the staff person placing the order. Additional disciplinary action may be taken against the responsible staff person.

For each suspected incident of an unauthorized purchase, procurement staff will notify the staff person(s) involved and request appropriate documentation to authorize or cancel the purchase and to ensure future compliance with this policy.

K. Protests

A bidder, who wishes to file a bid protest, must file such notice and follow procedures prescribed by F.S. 120.57(3) and **Board Policy Bylaw** 0133, Quasi-Judicial Proceedings, for resolution.

i. Definitions

1. **"Decision or intended decision" means:**

- a. **The contents of a solicitation, including addenda (specifications);**
- b. **A determination that a specified procurement can be made only from a single source;**
- c. **Rejection of a response or all responses to a solicitation; or**
- d. **Intention to award a contract as indicated by a posted notice of intended action.**

2. **"Filed" means that a document has been physically received and time/date stamped by the clerk of the School Board within the time required by this policy.**

ii. Notice of Decision

Notice of the decision or intended decision to award a bid shall be given by electronic posting of the solicitation, notice of decision, or notice of intended action as indicated on the solicitation documents and/or the District's website. The notice shall contain the following statement: "Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes."

iii. Protest of Specifications

Any notice of protest of the specifications, as defined in section K.i.1.a. above, contained in an Invitation to Bid (ITB) or Request for Proposal (RFP) or Invitation to Negotiate (ITN) shall be filed accordance with Board ~~Policy~~~~Bylaw~~ 0133, Quasi-Judicial Proceedings.

For a protest of the specifications contained in an Invitation to Bid (ITB) or in a Request for Proposals (RFP) or Invitation to Negotiate (ITN), the ~~notice of protest~~~~Notice of Protest~~ shall be filed in writing with the Clerk of the Board within seventy-two (72) hours after the posting of a solicitation. The ~~formal written protest~~~~Formal Written Protest~~ shall be filed within ten (10) calendar days after the date the notice of protest is filed. The protesting bidder shall also be required to post a bond consistent with this policy. Failure to file a notice of protest, Notice of Protest or failure to file a formal written protest, or bond within the time prescribed~~Formal Written Protest~~ shall constitute a waiver of proceedings to challenge the contents of the solicitation (specifications) under F.S. Chapter 120 and this policy~~rule~~. The ~~formal written protest~~~~Formal Written Protest~~ shall state with particularity the facts and law upon which the protest is based. Saturdays, Sundays, and legal holidays shall be excluded in the computation of the seventy-two (72) hour time period provided by this paragraph.

iv. Protest of Bid Award

Any person who is adversely affected by a decision or intended decision as defined in Section K.i.1.b.-d. above, shall file a notice of protest in writing with the Clerk of the Board within seventy-two (72) hours after the posting of the notice of the decision or intended decision, as applicable. A formal written protest shall be filed within ten (10) calendar days after filing the notice of protest. The protesting bidder shall also be required to post a bond consistent with this policy. Failure to file a notice of protest, formal written protest, or bond within the time prescribed shall constitute a waiver of proceedings to challenge the bid award under F.S. Chapter 120 and this policy. The formal written protest shall state with particularity the facts and law upon which the protest is based. Saturdays, Sundays, and legal holidays shall be excluded in the computation of the seventy-two (72) hour time period provided by this paragraph.

v. Resolving Protests

Bid protests shall be resolved in accordance with the procedures set forth in this policy, Policy 0133, Quasi-Judicial Proceedings, and the requirements of F.S., Section 120.57(3) and applicable Florida Administrative Code rules.

Formal written protests will be reviewed by District's Office of Procurement Management Services, which will offer the protesting bidder the opportunity to meet and discuss the merits of the protest within seven (7) days, excluding Saturdays, Sundays, and State holidays, after receipt of the formal written protest and bond. If the protest is not resolved, the matter may be referred for proceedings, pursuant to F.S. 120.569 and 120.57. Petitions for hearings on protests pursuant to F.S. 120.569 and 120.57 must be filed in accordance with Board Policy 0133, Quasi-Judicial Proceedings. Additionally, the requirements contained in Chapter 28-110, F.A.C. apply to the notice of protest, formal written protest, and bond under this policy.

Upon receipt, the Board Clerk shall forward a copy of any notice of protest to the Board. After notice of protest is filed, the Clerk shall notify the Board upon receipt of a formal written protest and shall also notify the Board if no formal written protest is submitted after the statutory time period for filing a formal written protest has elapsed. The Clerk will inform the Board of the final resolution of any formal written protest, regardless of

**whether the resolution involved a formal administrative hearing. If the resolution involved a formal administrative hearing, the Board will be informed of the results in accordance with Policy 0133, Quasi-Judicial Proceedings.**

**L. Posting the Bond**

The protesting party shall post a bond in a form consistent with F.A.C. Rule 28-110.005(2). A notice of decision or intended decision shall contain this statement: "Failure to file a protest within the time prescribed in F.S. 120.57(3), or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceeding under F.S. Chapter 120."

1. Bond: Commodities (Other than Lease of Space) and Contractual Services (Including Professional Services and Insurance) – Pursuant to F.S. 287.042(2)(d), any person who files an action protesting a decision or intended decision pertaining to a solicitation or contract award shall post with the Board, at the time of filing the formal written protest, a bond secured by an acceptable surety company in Florida, payable to The School Board of Miami-Dade County, Florida, in an amount equal to one percent (1%) of the District's estimate of the dollar value of the proposed contract.
  - a. The District shall provide the estimated contract amount to the protestor within seventy-two (72) hours (excluding Saturdays, Sundays, and holidays when the District administrative office is closed) after the filing of the Notice of Protest. The estimated contract amount is not subject to protest under this policy or F.S. 120.57(3). In lieu of a bond, the Board may accept a cashier's check or money order in the amount of the bond.
  - b. The bond shall be conditioned upon the payment of all costs and charges which may be levied against the protestor in the administrative hearing in which the action is brought and in any subsequent appellate court proceeding.
  - c. Pursuant to F.S. 287.042(2)(c), if, the Board prevails in the administrative hearing process and any appellate court proceedings, it shall be entitled to recover all costs and charges which are included in the final order or judgment, excluding attorneys' fees. Upon payment of such costs and charges by the person protesting the decision or intended decision or contract award, the bond, cashier's check, or money order shall be returned to the protestor. If the protestor prevails, the protestor may recover from the Board the costs and charges which are included in the final order or judgment, excluding attorneys' fees.
2. Bond: Competitive Bids for Lease of Space -- Pursuant to F.S. 255.25(3) (c), any person who files an action protesting a decision or intended decision pertaining to a competitive bid for space to be leased by the Board shall post with the Board, at the time of filing the formal written protest, a bond payable to the Board in an amount equal to one percent (1%) of the estimated total rental of the basic lease period or \$5,000, whichever is greater. The bond shall be conditioned upon the payment of all costs which may be levied against him/her in the administrative hearing in which the action is brought and in any subsequent appellate court proceeding. If the Board prevails in the administrative hearing process and any appellate court proceedings, it shall recover all costs and charges, which are included in the final order or judgment, excluding attorneys' fees. Upon payment of such costs and charges by the person protesting the award, the bond shall be returned to him/her. If the person protesting the award prevails, the bond shall be returned to that person and s/he shall recover from the Board the costs and charges which are included in the final order or judgment, excluding attorneys' fees.
3. Bond: Construction Purchasing – Construction purchasing is separately governed by Board policy, and persons protesting competitive procurement related to educational facilities shall be required to post a bond in the amount specified in F.S. 255.0516, which also governs recovery of fees and costs including attorneys' fees.
4. Staying the Procurement Process – Upon timely receipt of the formal written protest petition, and posting of the bond, the solicitation or contract award process shall be stayed until the protest is resolved by final agency action, unless the Board sets forth, in writing, particular facts and circumstances which require the continuance of the solicitation or contract award process in order to avoid an immediate and serious danger to the public health, safety, and welfare.

**Protest of Bid Award**

~~Any person who is adversely affected by the Board's decision or intended decision, shall file a Notice of Protest in writing with the Clerk of the Board, who shall maintain an office in the Board Administration building, within seventy two (72) hours after the posting of the bid tabulation or after receipt of the notice of the Board's decision or intended decision and~~

~~shall file a Formal Written Protest within ten (10) calendar days after filing the Notice of Protest. The protesting bidder shall also be required to post a bond, consistent with this rule. Failure to file a Notice of Protest or failure to file a Formal Written Protest shall constitute a waiver of proceedings under F.S. Chapter 120.57. The formal written protest shall state with particularity the facts and law upon which the protest is based. Saturdays, Sundays, and legal holidays shall be excluded in the computation of the seventy-two (72) hour time period provided by this paragraph.~~

~~The Formal Written Protest will be reviewed by Procurement Management Services, who will offer the protesting bidder the opportunity to meet and discuss the merits of the protest within seven (7) days, excluding Saturdays, Sundays, and State holidays upon receipt of the formal written protest and bond. If the protest is not resolved, the matter may be referred for proceedings, pursuant to F.S. 120.569 and 120.57. Petitions for hearing on protests pursuant to F.S. 120.569 and 120.57 must be filed in accordance with Board Bylaw 0133 on quasi-judicial proceedings.~~

~~Upon receipt, the Board Clerk shall forward a copy of any Notice of Protest to the Board. After a Notice of Protest is filed, the Clerk shall notify the Board upon receipt of a Formal Written Protest, and shall also notify the Board if no Formal Written Protest is submitted after the statutory time period for filing a Formal Written Protest has elapsed. The Clerk will inform the Board of the final resolution of any Formal Written Protest, regardless of whether the resolution involved a formal administrative hearing. If the resolution involved a formal administrative hearing, the Board will be informed of the results in accordance with Policy 0133, Quasi-Judicial Proceedings.~~

#### O. Receiving and Opening of Bids

The Superintendent, or an administrator designated by the Superintendent, shall designate the time and place for receiving and opening of bids.

1. Except for construction solicitations, bids are to be submitted to Procurement Management Services or electronically up to the time and on the date specified in the bid documents. Bids received after the date and hour specified in the bid documents will not be considered.
2. At least two (2) Procurement Management Services staff will be assigned to facilitate the public bid opening.
3. All bids will be recorded at the time they are received, showing the bid number, bid title, and the names of the bidders submitting bid forms. Notification of timely receipt shall be confirmed by the bid opening minutes and submitted to the Board at the next regularly scheduled Board meeting.

The above guidelines for receiving bids do not apply to the awarding of bids at Board meetings.

#### P. The Recording or Tabulation of Purchasing Bids

The names of bidders, the prices submitted, and such other pertinent data, will be electronically available or entered on a tabulation sheet by Procurement Management Services. This information shall be available as set forth in F.S. 119.07.

#### Q. Rejection of Bids

The right to reject any and all bids is reserved by the Board and such reservation shall be indicated in all advertising and invitations. When bids are rejected and the project or requirement is not abandoned, new bids may be issued. Bids which contain any alterations or erasures may be rejected. Bids will be rejected for good and sufficient cause, such as faulty specifications, excessive cost, and abandonment of the requirements, insufficient funds, or other irregularities. Bids may be rejected for failure by the bidder to comply with any requirement stated in the bid document, the bid proposal form, or any attachments which become part of the bid.

#### R. Irregular or Deviating Bids

In the event that Procurement Management Services wishes to make a recommendation of an award of a bid to a bidder who has deviated from specifications, or in which there is any irregularity, the report recommending such an award should contain in detail: the manner in which the bid deviates from the specifications or is irregular, the reasons for the recommendation of the award, and approval by the Board Attorney.

#### S. Award Recommendation

Notice of Intended Action will be posted on the District's website for Procurement bids no later than the Friday preceding the week when the award is scheduled to be made by the Board or Superintendent.

T. Official Award Date

Awards become official when made, unless otherwise specified in the award recommendation.

U. Contract Renewals

The Board shall have the authority to award bids and reject any or all bids. The Superintendent shall have the authority to exercise, in subsequent years, any renewal options included in a bid solicitation, provided terms and conditions are favorable for the School District and subject to the availability of funds.

V. Legal Basis for Procedures

The procedures for the purchase of commodities and services, and construction of facilities for the District shall comply with the Florida statutes and the Florida Administrative Code.

W. Bidding

It is the policy of the Board that the Superintendent shall be responsible for estimating needs for items in common use and making quantity purchases. All items, or group of related items that cost in excess of the amount defined in F.A.C. 6A-1.012(6), shall be purchased based on competitive bids, except as otherwise authorized by Florida statutes and/or Florida Administrative Code.

X. Identical Prices/Points--Priorities for Award

When identical prices/points are received from two (2) or more vendors/firms and all other factors are equal, priority for award shall be given to vendors/firms in the following sequence:

1. A business that certifies that it has implemented a drug-free work place program shall be given preference in accordance with the provisions of F.S. 287.087;
2. Local vendor as defined by Board Policy 6320.05;
3. Certified service-disabled Veteran business;
4. A certified Minority/Women Business Enterprise vendor;
5. The Miami-Dade County SBE/Micro/Minority/Women Business Enterprise vendor;
6. The Broward, Palm Beach or Monroe County SBE/Micro/Minority/Women Business Enterprise vendor;
7. The Broward, Palm Beach or Monroe County vendor, other than the SBE/Micro/Minority/Women Business Enterprise vendor;
8. The Florida vendor who is a SBE/Micro/Minority/Women Business Enterprise vendor;
9. The Florida vendor, other than a Minority/Women Business Enterprise vendor;
10. The Minority/Women Business Enterprise vendor, who, because of lower prices, receives a larger dollar award for other items; and
11. The SBE/Micro/non-Minority/Women Business Enterprise vendor who, because of lower prices, receives a larger dollar award for other items.

In accordance with Florida law, local preference shall not be applied to competitive solicitations for construction services in which fifty percent (50%) or more of the cost will be paid from state-appropriated funds which have been appropriated at the time of the competitive solicitation. The solicitation documents for construction services in this event must disclose that no local preference consideration will be applied.

If application of the above criteria does not indicate a priority for award or cannot be applied by law, Board administration shall determine if the award is capable of being split, and, if the vendors will agree to split the award. If the award cannot be split, or the vendors do not agree to split the award, the award will be decided by the toss of a coin. The toss of a coin shall be held publicly, with the tie low bid vendors invited to be present as witnesses and participants. The Chief of Contract Administration shall conduct the toss, with two witnesses. The Chief of Contract Administration shall announce the result of the toss. The Chief of Contract Administration shall be responsible for the award of the contract. The Chief of Contract Administration shall be responsible for the award of the contract.

- Suspension or Default by Vendor

Board Policy 6320.04, *Contractor Discipline*, governs debarment, suspension, and other disciplinary action that may

be taken by the Board against contractors that violate law and Board policies.

Contractors may be suspended and/or debarred from doing business with the Board or otherwise disciplined. Suspension and debarment are serious sanctions that may only be imposed when it is in the best interest of the Board and to protect the public.

The Superintendent is authorized to develop and implement disciplinary procedures that comply with State and Federal laws, ordinances, codes, regulations, and Policy 6320.04.

- Bid or Contract Close-Out Period

Procurement staff and the originating department shall notify the vendor of the termination of the bid or contract services, within a reasonable time, requesting any pending reports, documents, data or property generated using district funds during the contract period or invoices to be submitted.

- Signatures of Superintendent and Designees on Contracts

The Board authorizes the use of signatures of the Superintendent and his/her designees on behalf of the Board on all contracts, agreements, and documents where a signature of the Chair is not required by law or regulation of the Department of Education. All contracts, agreements, and documents must be based upon approvals previously adopted and spread upon the minutes of the Board, unless exempted by Board policy. Each contract shall demonstrate its procurement authority.

- Purchasing Cards (PCards)

Pursuant to Board Policy 6424, purchasing cards may be used to make small dollar purchases and acquire materials and supplies as needed for operations.

Purchasing cards shall not be used to circumvent the general purchasing procedures established by State law and Board policy. Purchasing cards shall only be used for expenses in connection with Board-approved or school-related activities, that benefit the District and serve a valid and proper public purpose. Periodically, procurement staff shall review the PCard expenditures to ensure compliance with Board policies and the purchasing threshold requirements.

- Purchasing Principles

Employees shall be guided by the following principles and standards adopted by the National Institute of Governmental Purchasing (NIGP):

1. Accountability: taking ownership and being responsible to stakeholders for our actions, essential to preserve the public trust and protect the public interest.
2. Ethics: acting in a manner true to these values, essential to preserve the public's trust.
3. Impartiality: unbiased decision-making and action, essential to ensure fairness for the public good.
4. Professionalism: upholding high standards of job performance and ethical behavior, essential to balance diverse public interests.
5. Service: obligation to assist stakeholders, essential to support the public good.
6. Transparency: easily accessible and understandable policies and processes, essential to demonstrate responsible use of public funds.  
Ethics training on ethical standards that are no lower than those prescribed by the State shall be provided to all employees involved in procurement activities for the Board.

Complaints alleging discrimination against any commercial enterprise doing business with the Board must be filed and will be investigated and addressed in accordance with Board Policy 6465.

## **V. Maintenance of Procurement Records**

The District shall maintain records sufficient to detail the history of all procurements, in accordance with the applicable retention period provided in the Records Retention Schedule of the Florida Department of State, Bureau of Archives and Records Management, or in 2 C.F.R., Part 200 as applicable to Federal grant funds, whichever is longer. These records will include, but are not necessarily limited to, the following: rationale for the method of

procurement, selection of contract type, contractor selection, or rejection, and the basis for the contract price (including a cost or price analysis if applicable).

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Legal

- F.S. 255.0518
- F.A.C. Ch. 28-110
- F.A.C. Ch. 28-106
- F.S. 119.07
- F.S. 120.569
- F.S. 120.57
- F.S. 120.57(3)
- F.S. 255.0516
- F.S. 255.065
- F.S. 255.099
- F.S. 255.0991
- F.S. 255.25(3)(d)
- F.S. 282.0041(20)
- F.S. 286.0113(2)(b)(1)
- F.S. 287.017
- F.S. 287.042(2)(c)
- F.S. 287.056
- F.S. 595.404
- F.S. 1001.41(1)(2)
- F.S. 1001.42(12)(j)
- F.S. 1001.42(26)
- F.S. 1001.43(10)
- F.S. 1006.27
- F.S. 1010.04(2)
- F.S. 1010.04(4)(a)
- F.A.C. 6A-1.012
- F.A.C. 5P-2.002
- 2 C.F.R. 200.317-.326
- 2 C.F.R. 200.520
- Appendix II to 2 C.F.R., Part 200



Book	Policy Manual
Section	July 20, 2022 - <u>Initial</u> Reading
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#### 0133 - QUASI-JUDICIAL PROCEEDINGS

The School Board may assume jurisdiction over any dispute or controversy arising within the District and concerning any matter in which authority has been vested in the Board by statute, contract, or policy. The Board shall **adjudicate the act as** final appeal in the resolution of all **such matters in accordance with Chapter 120 of the Florida Administrative Procedure Act. of dispute within the school system including personnel due process hearings, student expulsions and alternative education assignments, and bid protests.** These appeals shall appear on the agenda in order to be adjudicated by the Board.

##### I. ~~Due Process~~ Administrative Hearings

This section provides the due process request procedures for adjudicatory proceedings in which the Board is a party.

##### ~~Filing Timelines~~

~~All parties entitled to a hearing under a collective bargaining agreement may file a request according to the rules and time limits in the agreement. Failure to file a timely request shall be deemed a waiver of the right to a hearing.~~

~~Students and parents/guardians of students recommended for expulsion or alternative educational assignment shall file a request for hearing within fifteen (15) calendar days of the date of the notice of disciplinary action. Failure to file a timely request shall be deemed a waiver of the right to a hearing.~~

~~Parents or guardians of students requesting a hearing on identification, evaluation, placement, or the provision of a free appropriate public education to exceptional education students shall proceed according to the procedural safeguards in Policy 2460.~~

~~A Notice of Protest shall be filed within seventy-two (72) hours after the posting of the bid tabulation or receipt of notice of the Board's decision or intended action. A Formal Written Protest, including posting of required bond, must be filed within ten (10) days after filing the Notice of Protest. Saturdays, Sundays, and legal holidays shall be excluded in the computation of the seventy-two (72) hour time period. Failure to file a timely Formal Written Protest and required bond shall be deemed a waiver of the right to a hearing. Upon receipt, the Board Clerk shall forward a copy of any Notice of Protest to the Board. After a Notice of Protest is filed, the Clerk shall notify the Board upon receipt of a Formal Written Protest and shall also notify the Board if no Formal Written Protest is submitted after the statutory time period for filing the Formal Written Protest has elapsed.~~

~~A request for a hearing to appeal a ninety (90) day charter contract termination or non-renewal must be filed by the charter school governing board within fourteen (14) calendar days after receiving the notice of termination. A request for a hearing to appeal an immediate termination must be filed within ten (10) calendar days. Failure to file a timely request shall be deemed a waiver of the right to a hearing.~~

A. General Filing Requirements for Hearing Requests

~~All requests for hearings must be in writing and filed with the Clerk of the Board.~~

~~Requests for hearings on student expulsions and alternative educational assignments will be granted or denied within fifteen (15) calendar days of receipt. A request may be denied if it is untimely or fails to meet filing requirements.~~

Requests for **all** hearings, **including related to** student expulsions, alternative education assignments, employee disciplinary matters, **F**ormal **W**ritten **P**rotests for bid protests, **and** charter contract terminations, **and** non-renewals, **and any other hearing requests governed by the Florida Administrative Procedure Act or other statute authorizing the filing of a hearing request with the Board must be filed directly with the Clerk of the Board and** must contain **the information required by the specific statute or rule at issue or, if not otherwise specified in statute or rule, as required by F.A.C. Rule 28-106.201, including:**

1. name and address of the petitioner;
2. explanation of substantial interests that will be affected by the Board's action;
3. statement of when and how petitioner received the notice of the Board decision;
4. statement of disputed issues of material fact; if there are none, the request must state that there is no disputed issue of material fact;
5. a concise statement of the ultimate facts alleged, **including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;**
6. **a statement of the specific and the** rules, regulations, statutes, and/or constitutional provisions which **require reversal or modification of the Board's proposed action, including an explanation of how the alleged facts related to the specific rules or statutes entitle the petitioner to relief;** and
7. a description of the relief requested, **stating precisely the action petitioner wishes the Board to take with respect to the Board's proposed action.**

Hearing requests that do not comply with these **filing requirements conditions may not be processed or may be**are subject to dismissal for lack of legal sufficiency.

B. Proceedings by Category

~~When a request for hearing is made, unless the Board determines that it is not timely or does not meet the filing requirements, the Board shall forward the request and all accompanying materials to the Division of Administrative Hearings and shall notify all parties of its action. Upon receipt of a sufficient petition, the Board shall refer the matter to the Florida Division of Administrative Hearings (DOAH) with a copy of the petition and the Board's notice of action.~~

1. **Employee d**Discipline

**All parties entitled to a hearing under a collective bargaining agreement may file a request according to the rules and time limits in the agreement. Failure to file a timely request shall be deemed a waiver of the right to a hearing.** Hearings on employee disciplinary matters shall be conducted according to the appropriate collective bargaining agreement. **Cases assigned to an Administrative Law Judge (ALJ) of the DOAH will result in a recommended order to the Board.**

2. **General s**Student **e**Expulsion, **and a**Alternative **e**Education **a**Assignment

**Parents or guardians of students or adult students recommended for expulsion or alternative educational assignment pursuant to Policy 5610, Suspensions and Expulsion of Students, shall**

file a request for hearing within fifteen (15) calendar days of the date of the notice of disciplinary action. Failure to file a timely request shall be deemed a waiver of the right to a hearing. Requests for hearings on student expulsions and alternative educational assignments will be granted or denied within fifteen (15) calendar days of receipt. A request may be denied if it is untimely or fails to meet filing requirements. Hearings ~~on student expulsions and alternative education assignments shall be~~are conducted by an ~~Administrative Law Judge ALJ~~ assigned by the ~~Division of Administrative Hearings DOAH~~ pursuant to F.S. Chapter 120. Cases assigned to an ALJ will result in a recommended order to the Board.

The Board shall provide a court reporter but the cost of preparing the hearing transcript shall be the financial responsibility of the party requesting the transcript. Students and parents who cannot afford a hearing transcript may petition the Board to pay the cost of the transcript by filing an affidavit stating that the student ~~participates in or~~is eligible for the Board's free and reduced meal program. If the student is not eligible for the free and reduced meal program, the student or parent must provide an insolvency affidavit that identifies the members of the household, the total wages, benefits, or other income received by all members of the household, and the time period in which those resources are received. The Board Clerk shall verify and certify that the student is indigent according to applicable guidelines. Upon certification, the Board Attorney shall order and pay the costs of the transcript. A denial of certification may be reviewed by the Superintendent whose decision shall be final.

Following the assignment of an Administrative Law Judge, the Board shall file a Notice of Specific Charges that contains:

- a. name of student;
- b. explanation of how the student will be affected by the Board's action;
- c. statement of when and how the School Board delivered its notice of disciplinary action to student or student's parent;
- d. a concise statement of material facts, disputed or otherwise;
- e. rules, regulations, statutes and/or constitutional provisions that the Board is relying upon; and
- f. demand for relief.

Within ten (10) business days of the date of the notice, the student or parent may submit a written answer to the Notice of Specific Charges challenging the Board's action. The Board may submit a written response to any written answer filed by the student or parent.

The recommended order issued by the Administrative Law Judge shall be submitted to the Board within fifteen (15) calendar days of the hearing unless another date is agreed upon.

### 3. Students with ~~d~~Disabilities

a. IDEA - Parents or guardians of students or adult students requesting a hearing on identification, evaluation, placement, or the provision of a free appropriate public education to students eligible for special education and related services under the Individuals with Disabilities Education Act shall file their Due Process Request (FM-5773) with the School Board Clerk according to the procedural safeguards required by F.A.C., 6A-6.03311 and Policy 2460, Exceptional Student Education. Hearings ~~on students with disabilities, including disciplinary action,~~ shall be conducted by an Administrative Law Judge assigned by the Division of Administrative Hearings pursuant to F.S. 1003.57(1)(c). Cases assigned to an ALJ will result in a final order.

b. Section 504 - Parents or guardians of students or adult students requesting a hearing pursuant to Section 504 of the Rehabilitation Act of 1973 and Policy 2260.01, Section 504 Procedures for Students with Disabilities, must file a sufficient Due Process Request (FM-7157) with the School Board Clerk in accordance with the requirements of Section A. above and the District's Section 504 Procedural Safeguards document. Hearings shall be conducted by an Administrative Law Judge assigned by the Division of Administrative Hearings. The requirements for obtaining a transcript of the proceeding set forth in Section B.2. above apply. Cases assigned to an ALJ will result in a final order.

#### 4. Bid ~~p~~rotests

~~Hearings on bid protests shall be conducted by an Administrative Law Judge assigned by the Division of Administrative Hearings pursuant to F.S. Chapter 120.~~

~~Following receipt of a Formal Written Protest, and prior to forwarding it to the Division of Administrative Hearings, the Board shall provide an opportunity to resolve the protest within seven (7) days, excluding Saturdays, Sundays and legal holidays. The Clerk will inform the Board if the protest is resolved prior to hearing.~~

A notice of protest shall be filed in writing with the Clerk of the School Board within seventy-two (72) hours after the posting of the solicitation, notice of decision, or notice of intended action as indicated on the solicitation documents and/or the District website, in accordance with F.S. Chapter 120.57(3) and Policy 6320, Purchasing. A formal written protest, including posting of required bond, must be filed within ten (10) days after filing the notice of protest. Saturdays, Sundays, and legal holidays shall be excluded in the computation of the seventy-two (72) hour time period. Failure to file a notice of protest, formal written protest, or required bond within the time prescribed shall constitute a waiver of proceedings under F.S. Chapter 120. Upon receipt, the Board Clerk shall forward a copy of any notice of protest to the Board. After a notice of protest is filed, the Clerk shall notify the Board upon receipt of a formal written protest and shall also notify the Board if no formal written protest is submitted after the statutory time period for filing the formal written protest has elapsed. Bid protests shall be resolved under procedures set forth in this policy and Policy 6320, Purchasing, in conformity with the requirements F.S. Chapter 120 and F.A.C. Chapters 28-106 and 28-110. Hearings on bid protests shall be conducted by an Administrative Law Judge assigned by the Division of Administrative Hearings pursuant to F.S. Chapter 120. Cases assigned to an ALJ will result in a recommended order to the Board.

#### 5. Charter ~~e~~Contract ~~t~~erminations and ~~n~~on-renewals

A request for a hearing to appeal a 90-day charter contract termination or non-renewal must be filed by the charter school governing board within fourteen (14) calendar days after receiving the notice of termination in accordance with this policy and Policy 9800, Charter Schools. A request for a hearing to appeal an immediate termination must be filed within ten (10) calendar days. Failure to file a timely request shall be deemed a waiver of the right to a hearing. Hearings on charter contract terminations and non-renewals shall be conducted by an Administrative Law Judge assigned by the Division of Administrative Hearings pursuant to F.S. Chapter 120. For ninety (90) day terminations and non-renewals, the hearing must take place within ninety (90) days after receipt of a request for hearing. For immediate terminations, the hearing must take place and a final order issued within sixty (60) days. Cases assigned to an ALJ will result in a final order.

#### 6. Other Due Process Requests and Appeals

Other types of cases may be referred to the Division of Administrative Hearings as specifically authorized in any other Board policy or by statutory or regulatory requirement or contract.

#### D. Ex Parte Communications

Pursuant to F.S. 120.66, *ex parte* communications to the Board related to the merits of any dispute governed by this policy are prohibited beginning when the Board receives the Recommended Order from the Division of Administrative Hearings or the local hearing officer, until the Board issues a Final Order. If a Board member receives an *ex parte* communication in violation of this provision, the process in F.S. 120.66(2) shall be followed.

#### E. Exceptions

1. For due process hearings ~~involving students with disabilities under the IDEA~~ and charter school terminations and non-renewals, no exceptions are allowed. For all other hearings governed by this policy, any party may submit written exceptions to the hearing officer's recommended order to the Board Clerk within fifteen (15) calendar days of the date of the recommended order. For bid protests, exceptions must be filed with the Board Clerk within ten (10) calendar days. Failure to timely file exceptions shall constitute an acceptance of all portions of a recommended order to which exceptions have not been filed.

Any party may file a written response to any exceptions filed within ten (10) calendar days from the date the exceptions were served. These timelines may be shortened for charter contract terminations and non-renewals unless the parties agree to extend the statutory deadline for issuance of a final order.

2. All portions of the record, including the transcript and proposed final orders must be filed with any exceptions.
3. A written request for oral argument must be filed **with the Board Clerk** at least seven (7) days prior to the meeting during which the Board will consider the exceptions. If oral argument is timely requested, each party shall be provided ten (10) minutes at the Board meeting to argue the exceptions.

F. **Options Concerning Cases Resulting in Recommended Orders to the Board**

**In cases that result in a recommended order to the Board:**

1. The Board may adopt the **administrative law judge's** recommended order as the final order of the Board.
2. The Board may reject or modify the conclusions of law and interpretations of administrative rules over which it has substantive jurisdiction **if the Board states with particularity its reasons for rejecting or modifying such conclusions of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of rule is as or more reasonable than that which was rejected or modified.**
3. The Board may not reject or modify the findings of fact contained in the recommended order unless the Board first determines from a review of the complete record and states with particularity in the order that the evidence or that the proceedings on which the findings were based did not comply with the essential requirements of the law.
4. The Board may accept the recommended **penalty in a recommended** order but may not substantially modify or alter it without a review of the complete record ~~**if the Board substantially alters or modifies the recommended order, it must state and without stating**~~ with particularity its reasons for doing so and cite to the record to justify the action.
5. The Board's decision shall be based solely on the record and no Board member shall consider any matter not contained in the record as a basis for deciding the case.
6. Final Order **of the Board**
  - a. The **Board's** final order must be in writing and include any findings of fact and conclusions of law separately stated. **The Board shall provide a copy of the Board's final order and any exceptions to the Division of Administrative Hearings within 15 days after the order is filed with the Board Clerk.**
  - b. If exceptions are heard, the final order must explicitly rule on each exception. The Board is not required, however, to rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception or that does not include appropriate and specific citations to the record.
  - c. The Board member presiding over the meeting at which the order is adopted shall execute the final order.
  - d. Each final order shall contain a statement that judicial review is available under F.S. 120.68 within thirty (30) calendar days of the rendition of the final order.

**II. Indexing, Management, and Availability of Final Orders**

All final orders and a current subject-matter index identifying all final orders shall be made available **by the Board Clerk** for public inspection and copying, at no more than cost.

All final orders issued pursuant to F.S. 120.569, 120.57 (1), (2), and (3), shall be indexed and maintained **by the Board Clerk** in accordance with this policy and Florida Law.

All final orders shall be sequentially numbered as rendered using a two-part number separated by a dash with the first part before the dash indicating the year and the second part indicating the numerical sequence of the order issued for that year beginning with number 1 of each new calendar year. The assigned designation prefix, which is "MDCPS", shall precede the two-part number.

#### A. System for Indexing Final Orders

1. The index shall be alphabetically arranged by main subject headings. The applicable subject of the action construed within the final order shall determine the main subject headings and subheadings in the index. Main subject headings shall be all capital letters and shall be flush left on the page followed by relevant subheadings which shall be initial caps and lower case letters indented. Subheadings and sub-sub headings at equal indentations shall be alphabetized. The numbers of the final orders shall be listed sequentially in an indentation immediately below the applicable subheading. Cross references shall be used to direct the user to subject headings which contain the relevant information. Related key words (specific words, terms, and phrases) and common and colloquial words shall be listed and cross referenced to the appropriate main subject headings.
2. The main subject headings to be used in the index are as follows:
  - a. BID PROTESTS
  - b. BUSINESS SERVICES
  - c. EMPLOYEES
  - d. HEARING DENIALS
  - e. PROCEDURE
  - f. STUDENTS
3. The main subject headings shall be consulted by the Board Clerk and subsequent similar entries shall be indexed under the existing appropriate heading. The index shall be cumulative and shall be updated and made accessible to the public at least every 120 days. New main subject headings will be added when necessary. The index shall be cumulative for one (1) calendar year.
4. The Clerk of the Board shall index all final orders.

#### B. Maintenance of Records

All final orders that comprise final Board action and that must be indexed pursuant to this rule shall be permanently maintained by the Board pursuant to the retention schedule provided by law Department of State, Division of Library and Information Services.

#### C. Plan

1. The Board shall make final orders accessible and available to the public by sequentially numbering and indexing all final orders. The Board shall make the final orders and subject matter index available to the public.
2. The Board Clerk shall assist the public in obtaining information pertaining to final orders.
3. The system or process used by the Board Clerk to search and locate all final orders is as follows:
  - a. The Clerk shall enter into a computer all final orders according to subject matter.
  - b. The Clerk shall search and locate final orders by consulting main subject headings, subheadings, and sub-subheadings. The Clerk shall then locate the requested final order which will be filed sequentially by final order number and housed in the office of the Board Clerk.

4. The Board maintains and stores the final orders and index in the office of the Board Clerk located in the Board Administration Building, 1450 N.E. 2nd Avenue, Miami, Florida 33132. The office of the Board Clerk is open to the public between the hours of 8:00 a.m. and 4:30 p.m., excluding holidays and weekends.

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Legal	29 U.S.C. 794
	F.A.C. Chapter 28-110
	F.A.C. Chapter 28-106
	F.A.C. 6A-6.03311
	F.S. 1012.335
	F.S. 1003.57
	F.S. 255.0516
	F.S. 255.0158
	F.S. 120.53
	F.S. 120.569
	F.S. 120.57
	F.S. 1002.33
	F.S. 1006.07
	F.S. 1012.22
	F.S. 1012.34