

Dr. Steve Gallon III, Vice Chair

**SUBJECT: POLICIES, PROCEDURES, PARTNERSHIPS, AND PROVISIONS
REGARDING SCHOOL BOARD OWNED PROPERTY**

COMMITTEE: FACILITIES & CONSTRUCTION

LINK TO STRATEGIC

PLAN: EFFECTIVE & SUSTAINABLE OPERATIONAL PRACTICES

Miami-Dade County Public Schools stands at the epicenter of the community's stability, viability, and long-term success. In this posture, it must always remain fully cognizant and engaged in matters that will ultimately impact the education of students---the fulcrum of its mission as the nation's 4th largest school district. The School Board has demonstrated a long-standing commitment to addressing, supporting, and partnering on issues and matters that not only impact its students, but that have an impact on the community at large. Issues that impact the safety, security, and stability of parents and families have always been of concern to the District and have provided both opportunities and obligations to lead—to serve.

One of the most vexing issues facing Miami-Dade County, and quite frankly communities through the state and nation is the issue of affordable housing. Although the primary mission of M-DCPS, under the leadership of the School Board is the education of students, the emergence of recent issues, partnerships, proposals, and even public announcements demand that the School Board reviews both its policies and position, as well as its constitutional, legal, and statutory provisions regarding district-owned property, and potential proposals for partnerships or sale regarding the same.

In doing so, the School Board must always be cognizant that Board-owned property was procured for the sole purpose of supporting the education of the community's children, and that any deviation in such use must be done in a prudent, public, procedural, and policy-driven manner.

The Constitutional, statutory and policy-based mission of the School Board *"is to provide the highest quality education so that all students are empowered to lead productive and fulfilling lives as lifelong learners and responsible citizens."* This mission must always remain the fulcrum and the forefront of the School Board and District. Despite this mission, Miami-Dade County Public Schools has become aware of the severe housing affordability crisis and increasing scarcity of land availability in Miami-Dade County and the issues created by these scarcities, including constraints associated with affordable housing projects. This awareness, however, must be guided and undergirded by an unwavering commitment to adherence to School Board policy and the full recognition by any and all present and potential/prospective partners that it is the School Board that bears and is charged with the ultimate legal authority in matters pertaining to Board-owned property. The School Board's commitment to serving and supporting its students and their families must be properly squared with the constructs of compliance, process, and transparency in matters relating to Board-owned property.

In pursuit of its mission, the School Board is empowered to create policies, and establish tax rates and budgets to support its primary mission of making “adequate provision” for a “*uniform, efficient, safe, secure, and high-quality system of free public schools that allows students to obtain a high-quality education*” for the needs of students in Miami-Dade County in a manner that is consistent with Board Policy 2105, *Mission of the District, to promote the District’s core values of “Excellence, Integrity, Equity, and Citizenship.”*

School Board-owned property by law is for “*use in the service of K-12 education.*” Thus, all Board-owned property is designated for educational uses. School officials are required to build and provide school facilities in accordance with the applicable building codes, and as such, build schools with adequate playgrounds and open fields so that students can engage in recreational and other academic and instructional activities.

Given the problems that have occurred in the area of affordable housing, community buildings, park spaces, and other complex projects that contemplate public-private partnerships and ventures, it is important that the School Board reviews present policies and reaffirm and where needed, establish appropriate guidelines and parameters that recognize its primary core mission to educate children. In doing so, the School Board must always recognize that projects that the Board engages must safeguard the taxpayers’ assets in a manner that is in full compliance with the law and the adoption and implementation of best practices.

As it relates to the acquisition, use, leasing, and disposition of Board-owned property, the School Board has established several policies and procedures based on the requirements of Florida Statutes and State Board Rules, including the State Requirements for Educational Facilities (SREF). Over the last two decades, these policies have served the Board well in terms of ensuring that the educational mission is served and that valuable real estate assets are acquired, disposed of, used, or leased in a manner that is open, transparent, fair, equitable and that promotes and protects the educational mission of the School Board. In light of the new complex projects being contemplated, such policies require updating so that the Board’s interests are protected.

Policy 7315, *Disposal of Surplus Land and Other Real Property*, sets forth a process for the sale of land or other real property. It requires that the real estate in question be declared to be “unnecessary or unsuitable for educational purposes” Following such a declaration, the Policy permits the Board to: transfer the property to another governmental agency if the Board deems it to be in the “best interest of the public.”; trade to a public or private entity based on appraisals, demonstrating equal or equivalent value is obtained; sell the property in a public or private sale based upon appraisals obtained and fair market value established by the Board; and after the Board has disposed of any land or other real property, pursuant hereto, the funds received from the sale of the property shall be placed in the appropriate part of the Board's budget and expended for “capital outlay requirements” of the Board.

Policy 7100, *Facilities Planning*, among other things, creates a “School Site Planning and Construction Committee” comprised of various professionals to “provide input, monitor and make recommendations to the Board on the District’s site facilities planning, site selection and acquisition, and construction programs and alternatives, to ensure they are cost-effective and timely.” This Policy authorizes the Committee to “review potential sites for new schools, as well as proposals for significant renovation, location of relocatable or additions to existing buildings, and potential closure or alternate use of existing schools, and make recommendations on these and all other issues within its purview under this Board policy for consideration by Board staff.”

Policy 6327, *Public-Private Partnerships and Unsolicited Proposals*, permits the Board to receive unsolicited proposals and enter into arrangements with private parties for the purpose of building, upgrading, operating, ownership, or financing of facilities. In such cases, the Board may approve the development or operation of an educational facility or other government facility needed by the Board as a qualifying project, or the design or equipping of a qualifying project that is developed or operated, if it finds that there is a public need for the project, and that the estimated cost of the qualifying project is reasonable and beneficial to the Board in relation to similar facilities. The Policy authorizes staff to receive a design criteria package prepared by a design professional, specifying information needed to evaluate the projects worthiness and value to the Board. This policy authorizes a process for the receipt, evaluation, advertisement, and award of a qualifying public-private partnership project and provides suitable guidelines to ensure that the Board's interests are protected. The policy also requires an evaluation of the professional qualifications of the proposer(s), general business terms, innovative design techniques, or cost-reduction terms, and finance plans.

The primary focus of many of these policies is to ensure that transactions involving School Board-owned assets, real estate, and resources are properly evaluated and assessed *prior* to engaging into agreements that bind the district beyond a period of several years. It is also to ensure that the transactions are properly transparent and scrutinized and auditable, and that school district land is used for its intended purpose.

Even though Florida Statutes, Section 1001.43(12), permits the Board to "use portions of school sites, land deemed not usable, or land declared as surplus by the Board to provide sites for affordable housing for teachers and other district personnel ... independently or in conjunction with other agencies," federal affordable housing laws prohibit or severely limit the Board's ability to restrict affordable housing to teachers and district personnel.

Recently, the Board has engaged in several projects, such as the "Brickell Solutions" project approved by the Board on July 25, 2018, authorized entering into a Ground Lease Agreement ("Ground Lease") by and between the Board and the County for County-owned land, located at 945 S.W.3 Avenue, Miami, Florida 33130. This project served the education mission of the Board because as a result of receiving a 75-year ground lease for the County's land, the Board will build a school with approximately 700 permanent student stations. Although the County can give preference to District employees in renting these ten units, the County cannot legally require that such units can be rented to District employees. Even though affordable housing units cannot be restricted to District employees under federal affordable housing law, the primary core mission of the Board is still promoted with the building of additional student stations in the Brickell area, an area in high demand.

In addition, the Board approved an agreement for the sale of "Parcel 7" parking lot and the redevelopment of the School Board Administration Building, wherein the Board approved a Request for Proposal, and project award and a series of development agreements for a developer to build 100,000 square feet of office space for the District to locate District personnel and also a 700 space parking garage for District employees to utilize during business hours. As such, this project clearly contemplates promoting the mission of the Board.

These are complex transactions, and as transactions evolve in their complexities, it is important that moving forward, such transactions should be scrutinized to ensure that the full value of the transaction be disclosed to the public, and that the attorneys, the auditors and the Inspector General has an opportunity to review the merits of the transaction before the agreements are finalized and approved by the Board.

As such, the Board should be fully briefed on any and all major transactions being contemplated by the Superintendent and/or District staff. Any Board agenda item related to such transactions shall include the following:

- Description of the parties involved in the transaction, including those who are parties to any agreement wherein the School Board incurs liability. In identifying a party, the item should include the formal corporate name and fictitious names, if applicable. All related parties of interest must also be identified.
- Detailed description of ownership interests, including parties' interests, the size, shape, location, lot size (square footage), building size.
- Detailed description of the financial benefits to be obtained by all parties during the course of the agreements, including the benefits that accrue to the School Board.
- All restrictions and encumbrances, covenants, use restrictions, and any other interests that bind and inure to the benefit of parties, their successors and assigns, and any other party that acquires any right, title, or interest in the project.
- Development fees, lease payments, cash participation, net proceeds, payment provisions.
- For projects involving leasehold interest, a full financial analysis with respect to the anticipated revenues and fiscal impact of the development over the life of a lease and the percentage, if any, whether there are any archeological or historical designations or any biological, zoning or environmental problems (e.g., incinerators, active or inactive dump sites, toxic soil, underground storage tanks) on the property that could adversely impact the timely use of the property for the intended purpose.
- Condition of title to the site or any known title defects.
- Compatibility or incompatibility of present and projected uses of adjacent properties with the intended use.
- Parties responsible for monitoring and enforcing any agreements or use restrictions concerning the project.

- Estimated Timeline for Completion of the Project.
- If Miami-Dade County Public Schools' Property is involved in any project, appraisals must be conducted in accordance with Board Policy 7510.
- Provide a recommendation from the School Site Planning Committee, and a recommendation of the Chief Facilities Officer.
- All agreements associated with a Board item must be provided to the Board at the time of the publication of the agenda for a Board meeting.
- Incorporate a process for the Inspector General to be involved at the onset in any and all solicitations concerning such projects. In instances where a solicitation was not utilized, the Inspector General should be engaged in the process at the earliest opportunity and prior to publication of any and all Board items.
- Use agreements and restrictions that must also be recorded in a first priority position against the properties, prior to any financing documents or other encumbrances.
- The School Board maintains ownership and operation of the property during the use restriction period. The owner shall not convey, sublease or transfer the property approved for this disposition without the consent of the Board, and the restrictions shall run with the land.

This can be one item or several items, but all must be stated prior to the final approval of the project. Thus, this item seeks to direct the Superintendent to review, in consultation with the School Board Attorney, Board Policies concerning the development and use of Board-owned real estate, to ensure that the Board's interest in public education is protected and promoted when contemplating, proposing and negotiating such transactions; update procedures concerning the development and use of Board-owned real estate, to ensure that the Board's interest in public education is protected and promoted; provide quarterly updates to the Board regarding all projects currently under negotiation or consideration; and

update Board Policies and/or procedures to ensure that the Office of Inspector General is notified of major solicitations or negotiations involving public-private partnerships for complex real estate transactions.

The above actions will affirm the Board's fiduciary role in protecting the investment of taxpayer funds, as well as insulate the Board from any and all actions that may evolve outside of the parameters and provisions of Board policies and relevant state statutes, State Board Rules and relevant laws.

This item has been reviewed and approved by the School Board Attorney as to form and legal sufficiency.

**ACTION PROPOSED BY
DR. STEVE GALLON III:**

That The School Board of Miami-Dade County, Florida, direct the Superintendent to:

1. review, in consultation with the School Board Attorney, Board Policies concerning the development and use of Board-owned real estate, to ensure that the Board's interest in public education is protected and promoted when contemplating, proposing and negotiating such transactions;
2. update procedures concerning the development and use of Board-owned real estate, to ensure that the Board's interest in public education is protected and promoted;
3. provide quarterly updates to the Board regarding all projects currently under negotiation or consideration; and
4. update Board Policies and/or procedures to ensure that the Office of Inspector General is notified of major solicitations or negotiations involving public-private partnerships for complex real estate transactions.