

Office of the General Counsel
Walter J. Harvey, General Counsel

SUBJECT: **INITIAL READING: PROPOSED AMENDMENTS TO
SCHOOL BOARD POLICY 6325, *CONE OF SILENCE***

COMMITTEE: **FISCAL ACCOUNTABILITY & GOVERNMENT
RELATIONS**

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

Board Policy 6325, *Cone of Silence*, is proposed for amendment pursuant to Board Agenda Item H-5 (Rev.), *Cone of Silence*, sponsored by Board Chair, Ms. Maria Teresa Rojas, and approved by the Board at its regular meeting of December 14, 2022. Item H-5 directed the Superintendent to initiate rulemaking proceedings, in accordance with the Administrative Procedure Act, to amend School Board Policy 6325 – *Cone of Silence*. The proposed amendment specifies that the cone of silence shall terminate when the agenda is published for the upcoming School Board meeting, wherein the Superintendent recommends an award or approves a contract; rejects all bids or responses; or takes any other action that ends the solicitation and review process. Any item withdrawn from the published agenda will once again fall under the cone of silence.

The policy amendment was drafted in collaboration with, and reviewed by the Superintendent, Cabinet, and District staff. The Notice of Intended Action and policies with strikethroughs and underlines are attached.

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 Board Policy, 6325, *Cone of Silence*.

NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on January 18, 2023, its intention to amend Board Policy 6325, *Cone of Silence*, at its meeting of March 15, 2023.

PURPOSE AND EFFECT: Board Policy 6325, *Cone of Silence*, is proposed for amendment as a result of Board initiative.

SUMMARY: Board Policy 6325, *Cone of Silence*, is proposed for amendment pursuant to action by the Board at its regular meeting of January 18, 2023. The proposed amendment specifies that the cone of silence shall terminate when the agenda is published for the upcoming School Board meeting, wherein the Superintendent recommends an award or approves a contract; rejects all bids or responses; or takes any other action that ends the solicitation and review process. Any item withdrawn from the published agenda will once again fall under the cone of silence.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: Fla. Stat. ss. 1001.41(1), (2); 1001.42(12).

LAWS IMPLEMENTED INTERPRETED OR MADE SPECIFIC: Fla. Stat. s. 1001.43(2).

IF REQUESTED, A HEARING WILL BE HELD DURING SCHOOL BOARD MEETING OF March 15, 2023, 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 February 14, 2023, 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	January 18, 2023 - <u>Initial</u> Reading
Title	CONE OF SILENCE
Code	6325
Status	<u>Initial</u> Reading

6325 - **CONE OF SILENCE**

- A. "Cone of silence" means a prohibition on any communication regarding a particular Request for Proposals (RFP), bid, invitation to bid, or other competitive solicitation between:
1. any person who seeks an award, including a potential vendor or vendor's representative, an employee, partner, director, or officer of a potential vendor, or consultant, lobbyist, or actual or potential subcontractor or sub-consultant of a vendor, or any other individual acting through or on behalf of any person seeking an award; and
 2. any School Board member or the member's staff, the Superintendent, deputy superintendent and their respective support staff, or any person appointed by the Board to evaluate or recommend selection in the competitive procurement process.
- B. A cone of silence shall be applicable to each RFP, bid, invitation to bid, or other competitive solicitation during the solicitation, review, and proposed Board action of bid proposals as appropriate. At the time of issuance of the solicitation, the Superintendent shall provide public notice of the cone of silence and written notice, including electronic communication, to the Board, District staff and any other person involved in the review, evaluation, recommendation, approval, rejection, or award of the responses as appropriate. The Superintendent shall include in any advertisement and public solicitation for goods and services a statement disclosing the requirements of this section.
- C. For unsolicited public-private partnership proposals, the cone of silence shall be imposed from the time the proposal is received in accordance with Policy 6327, *Public-Private Partnerships and Unsolicited Proposals*.
- D. The cone of silence shall terminate at the time when the agenda is published for the upcoming School Board meeting, wherein the Superintendent:

1. recommends an award or approves a contract;
2. rejects all bids or responses; or
3. takes any other action that ends the solicitation and review process.

~~D. Any item withdrawn from the published agenda will once again fall under the cone of silence, the item is presented by the Superintendent to the appropriate Board committee immediately prior to the Board meeting at which the Board will award or approve a contract, reject all bids or responses, or take any other action that ends the solicitation and review process.~~

E. This rule shall not prohibit any potential vendor or vendor's representative:

1. from making public representations at duly noticed pre-bid conferences or before duly noticed selection and negotiation committee meetings;
2. from engaging in contract negotiations during any duly noticed selection and negotiation committee meetings;
3. from making a public presentation to the Board during any duly noticed public meeting on any topic that is not under the cone of silence and is otherwise permitted under Bylaw 0169.1; or
4. from communicating in writing with any school district employee who is not serving on the applicable evaluation committee, or the General Counsel's office to seek clarification or additional information, subject to the provisions of the applicable RFP, or bid documents.

The potential vendor or vendor's representative shall file a copy of any written communication with the Board clerk who shall make copies available to the public upon request.

F. The designated procurement official is not prohibited by this rule from initiating contact with a potential vendor or vendor's representative and engaging in subsequent communication related thereto for the purposes of obtaining further clarification regarding a response to an RFP, or competitive solicitation. Such contact shall be in writing and shall be provided to the Board clerk and members of the applicable selection and negotiation committee, including any response.

G. Any violation of this rule shall be investigated by the Board's inspector general and shall result in the disqualification of the potential vendor from the competitive solicitation process, rejection of any recommendation for award to the vendor, or the revocation of an award to the vendor as being void, rendering void any previous or prior awards. The potential vendor or vendor's representative determined to have violated this rule, shall be subject to debarment. In addition to any other penalty provided by law, violation of this rule by a School District employee shall subject the employee to disciplinary action up to and including dismissal.

Effective 7/1/11
Revised 9/9/15
Revised 1/25/17
Technical Correction 1/16/22

© **Miami-Dade 2022**

Legal References: ~~F.S. 1001.41(1)(2)~~
 F.S. 1001.42(12)(~~15~~)(~~25~~)
 F.S. 1001.43(~~402~~)
 F.S. ~~1001.51(14)~~

Adoption Date: **05.11**
Classification:
Revised Dates: ; **01.22**
