

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

SUBJECT: **INITIAL READING: PROPOSED AMENDMENTS TO SCHOOL BOARD POLICIES 6465, COMMERCIAL ANTI-DISCRIMINATION IN BUSINESS OPERATIONS AND PRACTICES, AND 0131.1, TECHNICAL CORRECTIONS, AND ADOPTION OF POLICY 6107, AUTHORIZATION TO ACCEPT AND DISTRIBUTE ELECTRONIC RECORDS AND USE ELECTRONIC SIGNATURES**

COMMITTEE: **FISCAL ACCOUNTABILITY AND GOVERNMENT RELATIONS**

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

Consistent with the Board's statutory responsibility to periodically review and update policies to conform to legislative changes and District practices, authorization is requested to amend Board Policies 6465, *Commercial Anti-Discrimination in Business Operations and Practices*, and 0131.1, *Technical Corrections*, and to adopt Policy 6107, *Authorization to Accept and Distribute Electronic Records and Use Electronic Signatures*.

Board Policy 6465, *Commercial Anti-Discrimination in Business Operations and Practices*, is proposed for amendment pursuant to Board Agenda Item H-14 (Rev.), *Exploring the Feasibility of Implementing an Equal Pay Policy for Procurement Contracts with Vendors*, sponsored by Board Member, Lucia Baez-Geller, and approved by the Board at its regular meeting of March 15, 2022. Item H-14 directed the Superintendent to explore the feasibility of implementing an equal pay policy for procurement contracts with vendors. The proposed policy revision incorporates language to expand the non-discrimination provision in business operations and practices to ensure that contractors, business entities, District-approved vendors, and consultants that contract with the District shall not discriminate between male and female employees by employing a person of one sex for any work at a rate of pay that is less than the rate of pay at which a person of the other sex is employed for similar or substantially similar work, notwithstanding any exceptions authorized by law.

Board Policy 0131.1, *Technical Corrections*, is proposed for amendment to clarify that the Superintendent is authorized to make technical corrections and conforming changes to policies that have already been adopted through normal rulemaking procedures.

Board Policy 6107, *Authorization to Accept and Distribute Electronic Records and Use Electronic Signatures*, is proposed for adoption in accordance with Florida Statutes, Section 668.50, which authorizes the Board to determine whether, and the extent to which, the District will send and accept electronic records and electronic signatures. The proposed policy requires

conformity with state and federal law, including assurances that an electronic record or electronic signature is attributed to a person as determined from the context and surrounding circumstances at the time of its creation, execution, or adoption. The use of electronic records and electronic signatures has become customary with evolving technology. Adoption of the policy supports continued efficiency of District operations.

The policy amendments and adoption were 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 Policies 6465, *Commercial Anti-Discrimination in Business Operations and Practices*, and 0131.1, *Technical Corrections*, and to adopt Policy 6107, *Authorization to Accept and Distribute Electronic Records and Use Electronic Signatures*.

NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on May 17, 2023, its intention to amend Board Policies 6465, *Commercial Anti-Discrimination in Business Operations and Practices*, and 0131.1, *Technical Corrections*, and to adopt Policy 6107, *Authorization to Accept and Distribute Electronic Records and Use Electronic Signatures*, at its meeting of June 21, 2023.

PURPOSE AND EFFECT: Board Policies 6465, *Commercial Anti-Discrimination in Business Operations and Practices*, is proposed for amendment as a result of Board initiative; Board Policy 0131.1, *Technical Corrections*, is proposed for amendment to conform to District practice; Board Policy 6107, *Authorization to Accept and Distribute Electronic Records and Use Electronic Signatures*, is recommended for adoption to conform to District practice.

SUMMARY: 6465, *Commercial Anti-Discrimination in Business Operations and Practices*, is proposed for amendment to expand the non-discrimination provision in business operations and practices to ensure that contractors, business entities, District-approved vendors, and consultants that contract with the District shall not discriminate between male and female employees by employing a person of one sex for any work at a rate of pay that is less than the rate of pay at which a person of the other sex is employed for similar or substantially similar work, notwithstanding any exceptions authorized by law. Board Policy 0131.1, *Technical Corrections*, is proposed for amendment to clarify that the Superintendent is authorized to make technical corrections and conforming changes to policies that have already been adopted through normal rulemaking procedures. Board Policy 6107, *Authorization to Accept and Distribute Electronic Records and Use Electronic Signatures*, is proposed for adoption in accordance with Florida Statutes, Section 668.50, which authorizes the Board to determine whether, and the extent to which, the District will send and accept electronic records and electronic signatures. The proposed policy requires conformity with state and federal law, including assurances that an electronic record or electronic signature is attributed to a person as determined from the context and surrounding circumstances at the time of its creation, execution, or adoption. The use of electronic records and electronic signatures has become customary with evolving technology. Adoption of the policy supports continued efficiency of District operations.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: Fla. Stat. ss. 1001.32(2); 1001.41(1), (2); 1001.42(12), (15), (29); 1001.43(6), (10).

LAWS IMPLEMENTED INTERPRETED OR MADE SPECIFIC: Fla. Stat. ss. 1001.41; 1001.49; 760.01; 725.07; 668.50.

IF REQUESTED, A HEARING WILL BE HELD DURING SCHOOL BOARD MEETING OF June 21, 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 June 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	May 17, 2023 - <u>Initial</u> Reading
Title	COMMERCIAL ANTI-DISCRIMINATION IN BUSINESS OPERATIONS AND PRACTICES
Code	6465
Status	<u>Initial</u> Reading

6465 - **COMMERCIAL ANTI-DISCRIMINATION IN BUSINESS OPERATIONS AND PRACTICES**

The School Board encourages and fosters an environment of diversity, equity, and inclusion in all of its business operations and practices. Inherent in this policy is the Board's commitment to ensuring that the rich tapestry of diversity, inclusion of varying ideas, backgrounds, and perspectives, if collectively recognized, creates cultural value and endorses the Board's obligation to eliminating perceived, artificial, or actual barriers to business engagement with the District.

The Board is committed to creating an environment in which all businesses are free to participate in business opportunities with the District and flourish without the impediments or barriers of discrimination.

I. Discrimination Prohibited

Contractors, business entities, District-approved vendors, and consultants that contract with the District, as well as Board employees involved in the procurement process:

- A. shall not discriminate against a business or individual based on sex, race, color, ethnic or national origin, religion, marital status, disability, genetic information, age, political beliefs, sexual orientation, gender, gender identification, social and family background, linguistic preference, pregnancy, and any other legally prohibited basis, in connection with the award and/or performance of contracts or modification of a contract between a vendor or

contractor and the Board which contract is paid for, in whole or in part, with Board appropriated funds; and

B. shall provide a full and fair opportunity for the participation of Small/Micro (S/MBE), Minority and Women-Owned Business Enterprises (M/WBE) in contracts and agreements pursuant to Board Policies 6320, *Purchasing*, Board Policy 6320.02, *Small/Micro and Minority/Women-Owned Business Enterprise Programs*, and Policy 6320.06, *Diversity, Equity and Inclusion in Business Operations and Practices*.

B.C. shall not discriminate between male and female employees by employing a person of one sex for any work at a rate of pay that is less than the rate of pay at which a person of the other sex is employed for similar or substantially similar work, notwithstanding any exceptions authorized by law.

II. **Applicability**

This policy is applicable to all contracts and agreements, including but not limited to, contracts or agreements for the design, development, construction, operation and maintenance of school facilities and other buildings and structures owned, leased or used by the District or its contractors, assignees, lessees and licensees; contracts or agreements for professional services and for purchase of goods, services, supplies and equipment.

III. **Definitions**

A. **Business Entity/Contractor/District Approved Vendor:** includes any person, firm, partnership, non-profit corporation, for-profit corporation, limited liability company or other legal entity that enters into a contract or agreement with the District.

B. **Complainant:** a person or business entity that makes a formal charge alleging wrongdoing.

C. **Discrimination:** the unfair or unequal treatment of an individual or group on the basis of sex, race, color, ethnic or national origin, religion, marital status, disability, genetic information, age, political beliefs, sexual orientation, gender, gender identification, social and family background, linguistic preference, pregnancy, and any other legally prohibited basis, in connection with the solicitation, selection, award and/or performance of contracts or modification of a contract between a vendor or contractor and the Board which contract is paid for, in whole or in part, with Board appropriated funds.

D. **Good Faith Belief:** a comprehensive term that encompasses a sincere belief or motive without any malice or the desire to defraud others.

E. **Probable Cause:** the conclusion of a set of apparent facts discovered through logical inquiry that would lead a reasonably intelligent and prudent

person to believe that an accused person or business entity has committed the alleged act(s).

F. Respondent: a person or business entity who is called upon to issue a response to an allegation made by another; specifically refers to a proceeding commenced by an investigation.

G. Small/Micro, Minority and Women-Owned Business Enterprises: defined in Board Policy 6320.02.

IV. Implementation

A. Articulation of the Policy

The Office of ~~Economic Opportunity (OEO)~~Procurement Management Services, in conjunction with the General Counsel's Office, will develop language to be included in bid solicitations, requests for proposals, agreements and contracts that clearly sets forth the objectives of this policy (solicitation language). District employees shall include this required solicitation language in all bids, public solicitations, requests for proposals, contracts, agreements and all communications to business entities or District-approved vendors, including those who wish to provide professional services to the District.

B. Certification of Compliance with the Policy

The certification of compliance requires that the business entity or its authorized representative submit its written policies and/or procedures regarding adherence to Federal, State, local laws, ordinances and Board rules, regarding non-discriminatory employment or procurement practices. The written policies and/or procedures along with the required District documentation must be submitted at the time the business entity registers to be a vendor with the District, responds to any solicitation published by the District, and/or at the time the business entity enters into any type of agreement or contract with the District.

C. Dissemination of Policy

The policy shall be articulated to the public in general, and to each business entity, vendor, contractor, assignee, lessee or licensee doing or seeking to do business with the District.

V. Complaint Process

Any person, business entity or District-approved vendor, who has a good-faith belief that they have been subjected to prohibited discrimination under this policy, may seek resolution through the procedures outlined below:

A. Complaints Against a District Employee(s)

An individual or business entity who has a good-faith belief that s/he/it has been the subject of discrimination by a District employee based on the protected categories listed within this policy, must submit the allegation(s) in writing to the Civil Rights Compliance Office (CRC) in accordance with the District's anti-discrimination complaint process outlined in Board Policy 1362.02, Policy 3362.02, or Policy 4362.02. No anonymous complaints shall be accepted or processed.

The CRC will thoroughly investigate the allegations and process its findings in accordance with the procedures in Policy 1362.02, Policy 3362.02, or Policy 4362.02.

B. Complaints Against Business Entity/District-Approved Vendor

An individual or business entity that has a good-faith belief that it has been the subject of discrimination by a District-approved vendor based on the protected categories listed within this policy, must submit the allegations in writing to the Civil Rights Compliance Office (CRC).

No anonymous complaints shall be accepted or processed. The CRC will thoroughly investigate the allegation(s) and process its findings pursuant to the following procedures:

1. Investigative Process

Complaints must be submitted within 180 days after the prohibited conduct occurred while the facts are still known and potential witnesses are available, and to ensure the prompt elimination of the conduct in question. Failure on the part of the person or business to initiate and/or follow-up on a complaint in a timely manner may result in the claim being considered abandoned. A business entity or District-approved vendor that fails to voluntarily cooperate with the investigation will be subject to the available sanctions applicable to this policy.

All complaints must include the following information to the extent it is available:

- a. The identity of the individual or business believed to have engaged in, or is engaging in, prohibited discrimination under this policy.
- b. A detailed description of the facts upon which the complaint is based upon.
- c. A list of potential witnesses.

d. Identification of the resolution the complainant seeks.

Upon receiving a written complaint, the Compliance Officer will consider, in conjunction with the head of the division or department, whether any action should be taken in the initial investigatory phase to protect the complainant from further legally prohibited discrimination. In making such a determination, the Compliance Officer should consult the complainant to assess his/her agreement to any action deemed appropriate.

Within five (5) business days of receiving the complaint, the compliance officer or designee will initiate a formal investigation to determine whether the complainant has been subjected to prohibited discrimination.

Within five (5) business days of receiving the written complaint of legally prohibited discrimination, the compliance officer will inform the individual or business entity alleged to have engaged in the prohibited conduct that a complaint has been received.

The CRC compliance officer or designee will conduct an oral interview and prepare a written summary of the oral interview, which will be presented to the complainant for verification and signature.

If the CRC determines that the complaint alleges prohibited discrimination, an investigation will be conducted according to its procedures outlined within this policy. The compliance officer or designee will complete the investigation into the allegations(s) of discrimination within forty-five (45) business days of receiving the written complaint. The investigation will include:

- a. interviews with the complainant;
- b. interviews with the respondent;
- c. interviews with any other witnesses who may reasonably be expected to have any information relevant to the allegations; and
- d. consideration of any documentation or other evidence presented by the complainant, respondent, or any other witness which is reasonably believed to be relevant to the allegations.

At the conclusion of the investigation, the respondent and the complainant will be provided with a written report of the findings summarizing the evidence gathered during the investigation and the final determination of the case.

If a finding of probable cause is determined, the CRC will forward the completed investigative report, to the Superintendent or his/her designee, to review the findings and make a recommendation for sanctions and a final disposition of the case.

2. Compliance/Sanctions

Substantiated violations of this policy and/or the provisions found in Policy 6320 will result in sanctions which may include suspension, vendor default, cancellation of the contract and/or debarment, pursuant to Policy 6320.04, *Contractor Debarment Procedures*. Non-adherence to Board Policy 6320.02 and Policy 6230.06 may also be a violation of this policy.

VI. Confidentiality

All investigations shall remain confidential and not subject to disclosure under F.S. Chapter 119 until a final determination is made. When a final determination is made, the complaint and any records created or obtained during the investigation will be subject to disclosure as public records under F.S. Chapter 119.

VII. Alternative Enforcement

These procedures are not intended to interfere with any person's right to pursue a complaint of legally prohibited discrimination with any local, State, or Federal enforcement agency.

Revised 09.09.2015
Technical Correction 11.16.22

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Adoption Date: 11.19.2014

Legal References: F.S. 760.01
 F.S. 725.07



Book Policy Manual
Section May 17, 2023 - Initial Reading
Title TECHNICAL CORRECTIONS
Code 0131.1
Status Initial Reading

0131.1 - **TECHNICAL CORRECTIONS**

The Superintendent is authorized to review policies and make technical corrections and conforming changes to policies that have already been adopted through normal rulemaking procedures. These technical corrections may include corrections or additions such as for grammatical or typographical errors, legal citation updates, section/paragraph designations, and other such technical and conforming changes that do not not affecting the construction or meaning of the policy-, and/or that may be necessary to reflect the Board's intent.

Effective 07.01.2011

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Legal References:

F.S. 11.242

F.S. 1001.41

F.S. 1001.49

Adoption Date: 05.11.2011



Book	Policy Manual
Section	May 17, 2023 - <u>Initial</u> Reading
Title	AUTHORIZATION TO ACCEPT AND DISTRIBUTE ELECTRONIC RECORDS AND USE ELECTRONIC SIGNATURES
Code	6107
Status	<u>Initial</u> Reading

6107 - AUTHORIZATION TO ACCEPT AND DISTRIBUTE ELECTRONIC RECORDS AND USE ELECTRONIC SIGNATURES

I. Use of Electronic Records/Signatures Authorized

Unless a provision of law enacted after July 1, 2000, specifically prohibits the use of an electronic record for the specified purpose, the School Board hereby authorizes the acceptance and distribution of electronic records and electronic signatures to and from District staff and other persons, as well as between District staff members. Additionally, the Board further authorizes District staff to create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures. However, if a provision of law requires:

- A. a record to be posted or displayed in a certain manner;
- B. to be sent, communicated, or transmitted by a specified method;
- C. to contain information that is formatted in a certain manner; or
- D. to be retained in a certain manner,

that provision of law must be followed.

All District staff shall comply with all provisions of F.S. 668.50 (the "Uniform Electronic Transaction Act"), as well as any rule or guidance issue by the State of Florida Department of Management Services when creating, generating, sending,

communicating, receiving, storing, processing, using, and relying upon electronic records or electronic signatures.

II. Method of Obtaining Electronic Record/Signature

The issuance/or acceptance of an electronic signature by or on behalf of the Board may be permitted in accordance with the provisions of this policy and all applicable State and Federal laws. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

An electronic record or electronic signature is attributable to a person if the record or signature was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable. The effect of an electronic record or electronic signature attributed to a person is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law. Such circumstances may include:

- A. The electronic signature is unique to the individual and identifies the individual signing the document by his/her name and title.
- B. The identity of the individual signing with an electronic signature is capable of being verified and authenticated.
- C. The integrity of the electronic signature can be assured.
- D. The electronic signature and the document to which it is affixed cannot be altered once the electronic signature has been affixed.
- E. The electronic signature complies with the School Board procedures for ensuring the security, integrity, and auditability of each signature.
- F. The electronic signature method allows for an opportunity for the prevention or correction of change/error.
- G. The electronic signature conforms to all other provisions of this policy.

III. Enforceability

- A. A record or signature may not be denied legal effect or enforceability solely because the record or signature is in electronic form.
- B. A contract may not be denied legal effect or enforceability solely because an electronic record was used in the formation of the contract.

- C. If a provision of law requires a record to be in writing, an electronic record satisfies such provision.
- D. If a provision of law requires a signature, an electronic signature satisfies such provision.
- E. Unless otherwise specified by law or policy, electronic signature satisfies all references to signatures in Board policy.

Adoption Date: 5.17.23

Legal References: F.S. 668.50