

Office of Superintendent of Schools
Board Meeting of June 21, 2023

June 8, 2023

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

SUBJECT: **INITIAL READING: PROPOSED AMENDMENTS TO SCHOOL BOARD POLICIES 5610, *SUSPENSION AND EXPULSION OF STUDENTS*, & 0133, *QUASI-JUDICIAL PROCEEDINGS***

COMMITTEE: **PERSONNEL, STUDENT, SCHOOL & COMMUNITY SUPPORT**

LINK TO STRATEGIC PLAN: **SAFE, HEALTHY, & SUPPORTIVE LEARNING ENVIRONMENTS**

Authorization is requested for the Superintendent to amend Board Policies 0133, *Quasi-Judicial Proceedings* and 5610, *Suspension and Expulsion of Students*, to conform with statutory requirements and District practices.

The proposed amendments to Board Policies 0133, *Quasi-Judicial Proceedings* and 5610, *Suspension and Expulsion of Students*, align with the most updated statutory requirements related to Zero Tolerance including the Board's authority to modify a student's expulsion if it is deemed to be in the best interest of the student and school district. The amendments clarify students' due process rights as they relate to suspension, expulsion, and administrative assignments. Additionally, the proposed amendments align with current District practices and the recent amendments to Board Policy 5500, *Student Conduct and Discipline*, as well as the *Code of Student Conduct Elementary* and *Code of Student Conduct Secondary*, incorporated by reference in Policy 5500.

The policy amendments 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 0133, *Quasi-Judicial Proceedings* and 5610, *Suspension and Expulsion of Students*.

G-7

NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on June 21, 2023, its intention to amend Board Policies 0133, *Quasi-Judicial Proceedings* and 5610, *Suspension and Expulsion of Students*, at its meeting of August 16, 2023.

PURPOSE AND EFFECT: To amend Board Policies 0133, *Quasi-Judicial Proceedings* and 5610, *Suspension and Expulsion of Students*, to align with Florida Statutes, Florida Board of Education Rules, and District practices.

SUMMARY: The proposed amendments to Board Policies 0133, *Quasi-Judicial Proceedings* and 5610, *Suspension and Expulsion of Students*, align with the most updated statutory requirements related to Zero Tolerance including the Board's authority to modify a student's expulsion if it is deemed to be in the best interest of the student and school district. The amendments clarify students' due process rights as they relate to suspension, expulsion, and administrative assignments. The proposed amendments align current District practices as well as the recent amendments to Board Policy 5500, *Student Conduct and Discipline*, as well as the *Code of Student Conduct Elementary* and *Code of Student Conduct Secondary*, incorporated by reference in Policy 5500.

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

LAWS IMPLEMENTED INTERPRETED OR MADE SPECIFIC: Fla. Stat. ss. 120.569; 120.57; 1002.20(4); 1003.01; 1003.02; 1003.32; 1003.57; 1006.07; 1006.08; 1006.09; 1006.13; F.A.C. 6A-6.03312; Chapter 28-106; 18 U.S.C. Section 921.

IF REQUESTED, A HEARING WILL BE HELD DURING SCHOOL BOARD MEETING OF August 16, 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 July 19, 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	June 21, 2023 - <u>Initial</u> Reading
Title	SUSPENSION AND EXPULSION OF STUDENTS
Code	5610
Status	<u>Initial</u> Reading

5610 - **SUSPENSION AND EXPULSION OF STUDENTS**

Suspension and expulsion are the most severe sanctions and cannot be imposed without due process. Prior to the use of suspension, the administrator should consider less restrictive alternatives such as an Alternative Educational Settings (AES), ~~(AED)~~ which includes but is not limited to the School Center for Special Instruction (SCSI) ~~and Student Success Center (SSC)~~. Students assigned to an AES SCSI and SSC must be afforded the opportunity to complete classwork. Students with disabilities must continue to receive a Free Appropriate Public Education (FAPE) while assigned to an AES SCSI.

No student is to be suspended, expelled, or excluded from an activity, program, or a school unless his/her behavior represents misconduct as specified in the Code of Student Conduct (COSC), Policy 5500. The COSC shall also specify the procedures to be followed by school officials. In addition to the procedural safeguards and definitions in this policy and the COSC, the procedures in Policy 2460 shall apply to students identified as disabled under the IDEA and/or Section 504 of the Rehabilitation Act of 1973. All disciplinary decisions and appeals related to sexual harassment shall be handled in accordance with Policy 5517, Policy 5517.02 and Policy 5517.03.

I. Definitions

- A. "Suspension" means the temporary removal of a student from all classes of instruction on public school grounds and all other school-sponsored activities, except as authorized by the Principal, for a period not to exceed 10 school days and remanding of the student to the custody of the student's parent with specific homework assignments for the student to complete. shall be the

~~temporary exclusion of a student from the District's program for a period not to exceed ten (10) school days.~~

- B. "Expulsion" means the removal of the right and obligation of a student to attend a public school under conditions set by the district school board, and for a period of time not to exceed the remainder of the term or school year and 1 additional year of attendance. Expulsions may be imposed with or without continuing educational services and shall be reported accordingly. Expulsion shall include the exclusion of the student from any traditional school, specialized center, or adult program for the number of school days remaining in the school year in which the incident that gives rise to the expulsion takes place and one (1) additional school year.
- C. "Alternative Education Assignment" means an administrative assignment by the Office of School Leadership and Performance/Alternative Education of a student to an AES for more than 10 days but less than a full expulsion period.
- D. "Alternative Educational Setting" (AES) means a corrective intervention used to address a student's needs and give the student time away from the classroom or regularly assigned school setting to learn targeted behavior management skills in a smaller school setting. Various types of AES are set forth in the COSC.

II. Suspension from School or From Riding School Bus

- A. When a student's actions violate law, School Board policies, or school rules, the student may be suspended by the Principal. A student who is suspended shall not be allowed to attend his/her regular classes or school-sponsored activities for a prescribed number of days not to exceed ten (10). The Principal may suspend a student from riding the school bus for a prescribed number of days not to exceed ten (10). Parents of students suspended from the school bus have the obligation to provide transportation to and from school. If bus transportation is a related service on a student's Individualized Education Plan (IEP), a bus suspension may constitute a change of placement pursuant to F.A.C. 6A-6.03312 if the student is unable to attend school due to the lack of transportation ~~must be counted towards the ten (10) days of suspension~~. Outdoor suspension criterion are located in the COSC.
- B. A teacher shall not suspend a student from school or class, nor shall a bus driver suspend a student from riding a school bus.

- C. The Superintendent may suspend a student from any or all co-curricular or extra-curricular activities for violations of the COSC. The length of suspension shall be determined according to the COSC. Additionally, a manifestation determination meeting may be required for students with disabilities, depending on the number of days of suspension given (Policy 2460).
- D. Prompt notice of a suspension shall be given by telephone to the student's parent if possible. Formal written notification to the student's parent shall be initiated within twenty-four (24) hours of the time the student is informed of the suspension.
- E. Except in the event of emergencies or disruptive conditions which require immediate suspension or in the case of a serious breach of conduct that is defined as willful disobedience, open defiance of authority of a member of the school staff, violence against persons or property, or any other act which substantially disrupts the orderly conduct of the school, all out-of-school suspensions shall not begin prior to the beginning of the next school day following the infraction unless the parents have been notified.
- F. Prior to the suspension, the student shall be given an informal and impartial hearing before the Principal and shall be informed of the charge(s) against him/her which may result in suspension. If the student denies the charge(s), s/he shall be given an explanation of the evidence, an opportunity to present his/her version of the case, and notification of the action taken by the Principal. In cases of extremely disruptive or dangerous behavior, persons or groups involved may be immediately suspended and ejected from the school campus without a prior hearing. In such instances, each student shall be afforded an informal hearing before the Principal prior to the expiration of suspension. Students are not entitled to full procedural rights that the law guarantees to students who are recommended for expulsion or are defendants in criminal cases. At suspension hearings, students are not:
 - 1. entitled to the presence of an attorney;
 - 2. allowed to confront or cross-examine witnesses;
 - 3. allowed to record mechanically⁷ or have a court reporter record the proceedings unless the Principal has elected to record or report the hearing verbatim.

If the parent(s) feel that the child has not been afforded a fair hearing at the school, they may request a review by the Region Superintendent. The appeal may consist of a review of the previous hearing, with a ruling on the facts and the validity of the suspension, or the hearing may be reconvened by the Region Superintendent or designee for additional testimony that may be deemed necessary in making a final decision.

- G. The Principal shall determine, in consultation with teachers, when appropriate, whether the student should be given the opportunity to make up school-workschoolwork and course requirements missed while absent due to out-of-school suspension. If this privilege is given, the student shall have a reasonable amount of time, up to three (3)-five (5) school days comparable to the days of suspension, following the suspension to complete the school-workschoolwork missed and shall do so on his/her own initiative. Failure to make up all written assignments missed during the approved time frame of suspension will result in the student being given the academic grade of "F" for those written assignments. Under no circumstances are teachers required to make special provisions to comply with this procedure. Upon completion of the make-up work, the student should submit the work to the teacher. The teacher must grade and record the make-up work as it is received. For students in exceptional education classes, refer to the Exceptional Student Education Policies and Procedures (SP&P) Policy 2460.
- H. The Superintendent may grant to a Principal the authority to waive mandatory suspension policies.

III. Expulsion/Administrative Assignment

- A. A Principal may recommend to the Superintendent expulsion or administrative assignment of a student to an AES at an alternative school in accordance with the COSC ~~the Superintendent~~. The Principal shall provide the Superintendent an adequate history of the student's actions and alternative measures taken relevant to the recommendation. Upon a recommendation for expulsion or administrative assignment, the student is suspended by the Principal and/or administratively assigned to an AES by the Office of School Leadership and Performance/Alternative Education. Offenses requiring a mandatory recommendation for expulsion are located in the COSC.
- A.B. Upon making a recommendation for expulsion or administrative assignment ~~When the Superintendent makes a recommendation for expulsion to the Board,~~ the Principal shall provide written notice ~~shall be given~~ to the student and his/her parent of the recommendation and charges and advising the student and parent of their right to ~~due process~~ an informal hearing at the school level prior to the suspension, unless the student's continued presence is such a danger to people or property or so disruptive of the educational process that the informal hearing must be delayed, in which case the informal hearing must be held as soon as practicable after the suspension. The informal hearing at the school level shall be conducted by the Principal. If available, the student shall be given an opportunity to be heard at the informal hearing. Failure to participate in the informal hearing with the Principal will constitute a waiver of the opportunity to appeal the decision to the Office of School Leadership and Performance/Alternative Education. Offenses requiring the recommendation for expulsion are located in the CSC.

C. Upon receipt of a recommendation for expulsion from the Principal, the Superintendent may administratively assign the student to an AES for more than 10 days but less than a full expulsion period, or the Superintendent may recommend to the Board that the student be expelled for the full period of expulsion as defined in Section I.B. above. The Office of School Leadership and Performance/Alternative Education will review the matter and provide notification to the parent of the Superintendent's decision on the recommendation for expulsion or administrative assignment. The notification shall state that within five (5) school days, the parent may request an appeal conference with a representative from the Office of School Leadership and Performance/Alternative Education to be conducted no later than fifteen (15) school days from the date of the request for appeal.

D. Upon receipt of a recommendation for expulsion from the Principal, the Superintendent may make an administrative assignment in lieu of expulsion or a Work Back in Lieu of Expulsion program. For expulsions pursuant to F.S. 1006.13, the Superintendent may request in writing that the Board modify the full expulsion requirement if it is in the best interest of the student and the school district. When Board action on a recommendation for expulsion of a student is pending, the Superintendent may extend the suspension assigned by the Principal beyond ten (10) school days if such suspension period expires before the next regular or special meeting of the Board.

B.E. Following receipt of the written decision by the Office of School Leadership and Performance/Alternative Education to administratively assign the student to an AES, the parent will have fifteen (15) calendar days to request a due process hearing with the School Board Clerk pursuant to F.S. ss. 120.69 and 120.57(2). If a student is being recommended for expulsion, the request for a due process hearing pursuant to F.S. ss. 120.69 and 120.57(2) must be filed subsequent to Board action. Prior to a formal hearing, the parent will be offered an appeal conference with a representative from School Operations the Office of School Leadership and Performance/Alternative Education.

C.F. For students in exceptional student education, refer to Exceptional Student Education Policies and Procedures (SP&P), Policy 2460. Students with disabilities who are expelled are entitled to a due process hearing with the Florida Division of Administrative Hearings pursuant to F.S. 1003.57 and F.A.C. 6A-6.03312 to challenge the manifestation determination. During the course of litigation, the student's placement is at the alternative school. Students with disabilities must continue to receive FAPE while assigned to an alternative school. Refer to the *Exceptional Student Education Policies and Procedures (SP&P) Policy 2460*. The District and Board shall comply with applicable State Board of Education rules related to students with disabilities. If the student/parent is challenging the underlying facts and circumstances of the recommendation for expulsion or administrative assignment, the due process hearing is governed by F.S. 120.69 and 120.57(2).

~~D.G.~~ All students who are recommended for expulsion shall undergo screening to determine if they qualify for exceptional education programs.

~~E.H.~~ A student who has been suspended or expelled by another district temporarily may be assigned to an alternative school for the same length of time as imposed by the other district.

~~F.~~ The informal hearing at the school level shall be conducted by the Principal. If available, the student shall be given an opportunity to be heard at this hearing. At the conclusion of the hearing, the Principal will reaffirm the suspension and recommendation for expulsion, or, based upon consideration of the facts and circumstances explained at the hearing, will advise the parent of the school's intention to withdraw the request for expulsion and take some alternative action.

~~G.~~ The parent shall be informed that, prior to any Board action being taken on the expulsion or administrative assignment, they will be given the opportunity to request a hearing before an impartial hearing officer. Prior to a formal hearing, the parent will be offered an appeal conference with a representative from School Operations/Alternative Education.

~~Students with disabilities who are expelled are entitled to a Due Process Hearing with the Florida Division of Administrative Hearings. However, during the course of litigation, the student's placement is at the alternative school. Students with disabilities must continue to receive FAPE while assigned to an alternative school. Refer to the Exceptional Student Education Policies and Procedures (SP&P) Policy 2460.~~

All disciplinary decisions and appeals related to sexual harassment shall be handled in accordance with Policy 5517, Policy 5517.02 and Policy 5517.03.

A copy of this policy is to be made available to students and parents upon request. Key provisions of the policy should also be included in the COSC.

Effective 7/1/11
Revised 10/21/20

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Legal References:

F.S. 120.569

F.S. 120.57

F.S. 1002.20

F.S. 1003.01

F.S. 1003.02

F.S. 1003.32

F.S. 1003.57

F.S. 1006.07

F.S. 1006.08

F.S. 1006.09

F.S. 1006.13

F.A.C. 6A-6.03312

~~F.A.C. 6A-19.008~~

F.A.C. Chapter 28-106

18 U.S.C. Section 921

~~34 C.F.R. Part 106~~

Adoption Date: 05.11.2011



Book	Policy Manual
Section	June 21, 2023 - <u>Initial</u> Reading
Title	QUASI-JUDICIAL PROCEEDINGS
Code	0133
Status	<u>Initial</u> Reading

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 final appeal in the resolution of all such matters in accordance with F.S. Chapter 120 of the Florida Administrative Procedure Act. These appeals shall appear on the agenda in order to be adjudicated by the Board.

I. **Administrative Hearings**

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

A. General Filing Requirements for Hearing Requests

Requests for hearings related to student expulsions, alternative education assignments, employee disciplinary matters, formal written protests for bid protests, charter contract terminations, 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. 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 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; 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 may not be processed or may be subject to dismissal for lack of legal sufficiency.

B. Proceedings by Category

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 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. Student Expulsion, Alternative Education Assignment

Parents or guardians of students or adult students ~~recommended for expulsion or~~ who receive an 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 from the Office of School Leadership and Performance/Alternative Education. Parents or guardians of students or adult students recommended for expulsion shall file a request for hearing within fifteen (15) calendar days after the Board has taken action on the expulsion. 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 are conducted by an ALJ assigned by the 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 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 General Counsel 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 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 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 Board Clerk according to the procedural safeguards required by F.A.C. 6A-6.03311 and Policy 2460, *Exceptional Student Education*. Hearings 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 Protests

A notice of protest shall be filed in writing with the Clerk of the 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 Contract Terminations and Non-renewals

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 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.

C. 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.

D. Exceptions

1. For due process hearings 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. [The Board Clerk shall notify the Board upon receipt of timely exceptions.](#) 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. [The Board Clerk shall notify the Board upon receipt of written responses to any exceptions.](#) 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.

E. 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 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 fifteen (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-subheadings 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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Revised 10.10.2018

Revised 09.07.2022

Technical Correction 11.16.2022

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Legal References:

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

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