



# Memorandum

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To: Hon. Solomon C. Stinson, Chair  
and Members, Miami-Dade County School Board

From: Christopher Mazzella, Inspector General  
Miami-Dade County Public Schools

Date: July 16, 2009

Subject: Proposed Amendments to School Board Rules Governing Conflicts of Interests, Proposing Guidelines on Due Diligence, and Requiring Annual Certifications for Board Members and Employees Who Are Required to File an Annual Financial Disclosure, Ref. IG08-53SB

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On February 23, 2009, the Office of the Inspector General (OIG) issued a report containing a recommendation that the School Board either adopt procedures further clarifying School Board Rule 6Gx13-4A1.212, *Conflicts of Interests*, or amend the rule so as to provide basic guidelines to its employees and officials regarding the extent of due diligence required to reasonably ensure they are not violating the rule. Thereafter, at its Board meeting of March 25, 2009, the School Board passed item H-22 Revised<sup>2</sup>, which requested the OIG to provide workable solutions to address the aforementioned recommendation. (Board Item H-22 Revised<sup>2</sup> attached as Exhibit 1.) This memorandum and the two proposed amendments (Exhibits 2 and 3) are responsive to the School Board's request that we provide workable solutions.

During the Ethics Advisory Committee (EAC) meeting of March 27, 2009, the OIG advised that it would spearhead a work group to develop some workable solutions. The OIG asked the EAC if it would designate one of its members to be part of this group. It did. The OIG's work group consisted of: Ms. Patra Liu, Assistant Inspector General; Ms. Jennifer Merino, OIG Assistant Legal Counsel; Mr. Luis Garcia, Interim School Board Attorney; Mr. Frederick (Buck) F. Thornburg, EAC member; Ms. Shirleyon McWhorter, Office of Civil Rights Compliance; and Ms. Maria Teresa Rojas, Assistant Superintendent for Professional Standards. The work group met on two occasions, once to discuss solutions generally and again to review the OIG's proposed rule change.

In arriving at a proposed solution, the work group considered the legal requirements and exceptions proposed by statute as well as the practical implications of any solutions. The goal was two-fold. On the one hand the goal was to arrive at meaningful guidance that would assist employees in obeying statutory requirements. On the other hand, the

district required a solution that would not be unduly burdensome to either employees or the district staff administering the program. This required understanding the exact legal requirements, determining how to target the guidelines for highest effectiveness and crafting understandable requirements.

As a result, the OIG has produced a proposal which would provide guidelines that all employees must follow to assure due diligence in compliance with the law. By necessity, the guidelines are simple. They require all employees to ask two questions when contracting and seek further specific guidance from the School Board Attorney's office if they receive an affirmative response.

However, to assure maximum effectiveness, there are additional requirements for School Board Members and employees with purchasing powers, identified in the rule as those who must file an annual financial disclosure as required by Florida statutes. These individuals would be required to file an annual form acknowledging knowledge and understanding of the guidelines and compliance with the rule in the past year. Finally, because there are two separate School Board Rules to govern employees and school board members, the guidelines are proposed for incorporation in both rules.

The OIG is providing you with these two proposed amendments for your consideration in line with your request pursuant to the aforementioned Board item. Please feel free to contact me should you have any questions.

#### Attachments

cc: Alberto Carvalho, Superintendent, Miami-Dade County Public Schools  
Luis Garcia, Interim School Board Attorney  
Jose Montes de Oca, Interim Chief Auditor  
Shirlyon J. McWhorter, Executive Director, Office of Civil Rights Compliance  
Maria Teresa Rojas, Assistant Superintendent, Office of Professional Standards  
Daneen Regna, Chairperson, and Members of the Ethics Advisory Committee

**School Board--Powers and Duties**

**CONFLICT OF INTEREST**

**I. Statutory Provisions**

School Board members are governed by the statutory provisions contained in the "Code of Ethics for Public Officers and Employees," Part III of Chapter 112, Florida Statutes; and by certain other statutes in the School Code.

The following simplified statements set forth the principles in these statutory mandates. They cannot be used as definitive rules to apply to different sets of circumstances or factual situations. In any given situation, the full statutory language must be consulted for applicable definitions, and for exemptions, if any.

**A. Standards of Conduct**

1. Gifts--No Board member may either solicit or accept anything of value--including a gift, loan, reward, promise of future employment, favor, or service--that is based on any understanding that the vote, official action, or judgment of the Board member would be influenced by such gift. Sec. 112.313(2), Fla.Stat. (1991).
  
2. Other Prohibited Gifts--No Board member may solicit any gift, food, or beverage from a political committee or committee of continuous existence, or from a lobbyist who lobbies the School Board (or the partner, firm, employer, or principal of the lobbyist), where the gift or food or beverage is for the benefit of the Board member, another Board member, or any member of the immediate family of a Board member. No Board member or any person on behalf of the Board member may knowingly accept a gift from a political committee or committee of continuous existence, or from a lobbyist who lobbies the School Board (or the partner, firm, employer, or principal of the lobbyist), if the Board member knows or reasonably believes the gift has a value in excess of \$100--unless the gift is accepted on behalf of and transferred promptly to a governmental entity or a charitable organization, or is given to the Board member by a governmental entity for a public purpose. Gifts from relatives are not

prohibited, nor gifts associated primarily with the recipient's employment or business. Food or beverage consumed at a single sitting or event may be accepted. Sec. 112.3148, Fla.Stat. (1991).

3. Honoraria--No Board member may solicit an honorarium related to the member's public office or duties. No Board member may knowingly accept an honorarium from a political committee or committee of continuous existence, or from a lobbyist who lobbies the School Board (or from the employer, principal, partner, or firm of the lobbyist). Actual and reasonable transportation, lodging, and food and beverage expenses related to the honorarium event for a Board member and spouse may be accepted. Sec. 112.3149, Fla.Stat. (1991).
4. Unauthorized Compensation--No Board member or his or her spouse or minor child may accept any compensation, payment, or thing of value which, with the exercise of reasonable care, is known or should be known to influence the vote or official action of such Board member. Sec. 112.313(4), Fla.Stat. (1991).
5. Doing Business With One's Agency--No Board member acting in his or her official capacity may, directly or indirectly, purchase, rent, or lease any realty, goods, or services from a business entity in which the Board member, his or her spouse, or child is an officer, partner, director, or proprietor, or in which the Board member, his or her spouse, or child (or any combination of them) owns a material interest. Nor may a Board member, acting in a private capacity, rent, lease, or sell any realty, goods, or services to the School Board or any of its agencies. Sec. 112.313(3), Fla.Stat. (1991).
6. Conflicting Employment or Contractual Relationship--No Board member may hold any employment or contract with any business entity or agency subject to the regulation of or doing business with the School Board. Neither may a Board member hold any employment or contractual relationship which will

pose a recurring conflict between his or her private interests and his or her public duties or would impede the full and faithful discharge of his or her public duties. Sec. 112.313(7), Fla.Stat. (1991).

7. Misuse of Public Position--No Board member may corruptly use or attempt to use his or her official position or any property or resource within his or her trust, or perform his or her official duties, to obtain a special privilege, benefit, or exemption for the Board member or others. Sec. 112.313(6), Fla.Stat. (1991).
8. Disclosure or Use of Certain Information--No Board member may disclose or use information not available to the general public and gained by reason of his or her public position for his or her personal benefit or the benefit of others. Sec. 112.313(8), Fla.Stat. (1991).
9. Employees Holding Office--No Board employee may be a member of the Board while simultaneously continuing as an employee. Sec. 112.313(10), Fla.Stat. (1991).

**B. Voting Conflicts**

A Board member is prohibited from voting on any matter which would inure to his or her special private gain, or to the special gain of a principal by whom he or she is retained, or to the special gain of the parent organization or subsidiary of a corporate principal by which he or she is retained, or to the special gain of a relative or business associate. The Board member must publicly state to the assembly the nature of his or her interest, and within 15 days file a written disclosure of the interest with the recording secretary of the Board. Sec. 112.3143, Fla.Stat. (1991).

**C. Instructional Materials**

No Board member shall accept anything of value or any inducement, to introduce, recommend, vote for, or otherwise influence the adoption or purchase of any instructional material. Sec. 233.115, Fla.Stat. (1991).

**D. Textbooks**

No Board member shall receive any gift or compensation for promoting the sale or exchange of any schoolbook, map, or chart in any public school, or be an agent for the sale, or the publisher of any school textbook or reference work, or be pecuniarily interested in the introduction of any such textbook. Sec. 233.45, Fla.Stat. (1991).

- E. No contract for supplying materials, supplies, and services needed for the district school system shall be made with any member of the School Board, with the Superintendent of Schools, or with any business organization in which any Board member or the Superintendent has any financial interest whatsoever. Sec. 230.23(10)(i), Fla.Stat. (1991).

**II. Additional Provisions**

The Board adopts the following regulations in addition to those required by statute.

- A. School Board members shall accept no gifts from any individual, firm, or business entity which the School Board member has reason to believe is doing business with or seeking to do business with the school district. Meals and admissions to events which relate directly to the school system may be accepted.
- B. School Board members shall not participate in trips paid by a vendor or potential vendor for the purpose of inspecting products or programs useful to the school district. Such trips, if deemed necessary, shall always be made at school district expense and approved by the Board at a public meeting.
- C. School Board members, their spouses or campaign committees shall not solicit any vendor or any employee of this school district to make contributions to any political campaign or testimonial.
- D. School Board members shall not solicit nor accept personal discounts on merchandise or services from individuals, firms or business entities which the Board member has reason to believe are doing business with or seeking to do business with this school district unless those discounts are available to the general public.

- E. No School Board member may recommend the services of any lawyer or law firm, architect or architectural firm, public relations firm, or any other person or firm, professional or otherwise, to assist in any transaction involving the Dade County public school system, unless such recommendation is made at a public meeting of the School Board.
- F. School Board members are prohibited from acting as an agent or attorney for compensation for anyone in connection with any matter in which Dade County Public Schools is interested for two years after her or his School Board service terminates.

III. Guidelines for Avoidance of Conflict of Interest

To avoid conflicts of interests or the appearance of such as it relates to personal purchases or private contracting, School Board members will adhere to the following guidelines.

- A. These guidelines apply to any contractual relationship, excluding purchases made in a private capacity of goods or services at a price and upon terms available to similarly situated members of the general public. All other contracts, including all those for negotiated prices and terms, will adhere to the following guidelines as the general availability to the public is not obvious or apparent.
- B. When entering into a transaction or contractual relationship as described above, all School Board members will make the following inquiries to the entity with whom they are contracting:
  - 1. Does the business entity with whom I am contracting have a contractual relationship with the School Board for more than \$500?
  - 2. Is the individual with whom I am contracting, regardless of the business entity, a principal or employee of an entity with a contractual relationship with the School Board for more than \$500?
- C. If an affirmative answer is given to either inquiry above, the School Board member receiving an affirmative answer will request from the School Board Attorney a written opinion indicating whether contracting with the individual or entity

would constitute a conflict of interest pursuant to "Code of Ethics for Public Officers and Employees," or other state statute or School Board Rule.a Commission on Ethics,

- D. School Board members will complete an annual Certification of Inquiry, attached as Exhibit "A", which is incorporated herein by reference, certifying that the member has read, understands and agrees to abide by the above stated Guidelines for Avoidance of Conflicts of Interest and certifying that they have abided by the guidelines in the previous year. The submission will be according to a process determined by the Office of Human Resources, Recruiting, and Performance Management.
- E. If at any time a School Board member requires clarification as to the application of the "Code of Ethics for Public Officers and Employees," they can and should obtain an opinion from the Florida Commission on Ethics.

Specific Authority: 230.22(2) F.S.

Law Implemented, Interpreted, or Made Specific: 112.313(2),(3),(4),(6),(7),(8) and

(10); 112.3143; 112.3148; 112.3149; 230.23(10)(i); 233.115; 233.45 F.S.

**History: THE SCHOOL BOARD OF DADE COUNTY, FLORIDA**

New: 8-20-86

Amended: 11-5-86; 11-1-89; 12-19-91

**CERTIFICATE OF CONFLICT OF INTEREST INQUIRY**

I, the undersigned, \_\_\_\_\_ hereby certify as follows:  
(Print your name)

I have read and understand School Board Rule 6Gx13- 4A-1.212 (School Board Rule 6Gx13-8A-1.041 for Board Members), incorporating Florida Statute §112.313(7)(a). In an attempt to avoid an actual or perceived conflict of interest, **I must make the following inquiries prior to entering into a contractual relationship with an entity or individual:**

1. Does the business entity with whom I am contracting have a contractual relationship with the School Board for more than \$500?
2. Is the individual with whom I am contracting, regardless of the business entity, a principal or employee of an entity with a contractual relationship with the School Board for more than \$500?

I understand this inquiry is not required for non-negotiated purchases made in a private capacity of goods or services at a price and upon terms available to similarly situated members of the general public. I understand that if the individual or entity answers either question in the affirmative, it is an indication that a conflict of interest **may** exist. I am aware I may find more information at <http://www.ethics.state.fl.us>, website for the Florida Commission on Ethics.

I have read, understand and agree to abide by the above mentioned rules and guidelines.

\_\_\_\_\_  
Date Your Signature

- In the past year I have abided by the guidelines and have received **NO AFFIRMATIVE RESPONSES.**

or

- In the past year I have abided by the guidelines and **RECEIVED AN AFFIRMATIVE RESPONSE** to either question. Please list the business entity's or individual's name, address and the date of inquiry. Please indicate if a written legal opinion was sought from the School Board Attorney.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Date Your Signature

\_\_\_\_\_  
Your Title, Position or Relationship with the Miami-Dade County Public Schools Employee Number and Work Location Number, if applicable

**PLEASE RETURN THIS CERTIFICATE TO** Office of Human Resources, Recruiting, Performance Management VIA SCHOOL MAIL OR BY FACSIMILE (305-995-7013).  
Office of Human Resources, Recruiting, and Performance Management  
Work Location #9311, 1500 Biscayne Boulevard, Annex Suite 241, Miami, FL 33132

**Permanent Personnel**

**CONFLICT OF INTEREST**

I. Statutory Provisions and Policy

School Board employees are governed by the statutory provisions contained in the "Code of Ethics for Public Officers and Employees," Part III of Chapter 112, Florida Statutes, and by certain other statutes in the School Code. The following sections of this rule set forth the principles, in simplified form, in the statutory mandates. They cannot be used as definitive rules to apply to different sets of circumstances or factual situations. In any given situation, the full statutory language must be consulted for applicable definitions, and for exemptions, if any.

School Board employees are required to comply with all provisions of the Code of Ethics, including those provisions outlined below. This requirement discourages the appearance of impropriety and the perception of undue influence upon the business functions of the school district.

This Board rule applies specifically to conflicts of interest. Employees are reminded that other Board rules exist that may also address an employee's particular issue or question. It is an employee's responsibility to refer to and observe all School Board Rules that may be applicable to his or her individual situation.

II. Provisions

A. Gifts

1. School Board employees are prohibited from soliciting or accepting anything of value, such as a gift, loan, reward, promise of future employment, favor, or service that is based on an understanding that their official action or judgment would be influenced by such gift. Section 112.313(2), Florida Statute (2002).
2. No School Board employee or his or her spouse or minor child shall accept any compensation, payment, or thing of value when

he or she knows, or with the exercise of reasonable care should know, that it was

given to influence an action in which the employee was expected to participate in his or her official capacity. Section 112.313(4), Florida Statute (2002).

**B. Misuse of Public Position**

No School Board employee shall corruptly use or attempt to use his or her official position or perform his or her official duties to secure a special privilege, benefit, or exemption for himself, herself, or others. Section 112.313(6), Florida Statute (2002).

**C. Doing Business with the School Board**

1. No School Board employee acting in his or her official capacity shall directly or indirectly purchase, rent, or lease any goods or services for the School Board from any business entity of which the employee or his or her spouse or child is an officer, partner, director or proprietor, or in which such employee or his or her spouse or child, or any combination of them, has a material interest. Section 112.313(3), Florida Statute (2002).
2. Some case-specific exceptions to this provision may apply. School Board employees should review Section 112.313(12), Florida Statutes, for exemptions that may be applicable to their particular situations.

**D. Conflicting Employment or Contractual Relationship**

1. In addition to the restrictions on outside employment that School Board Rule 6Gx13-4C-1.17, Employment - Nonschool, places on employees, no School Board employee shall hold any employment or contract with any business entity or any agency that is doing business with the School Board. This provision does not apply to organizations and their officers who, acting in their official capacity,

enter into or negotiate a collective bargaining contract with the School Board. Section 112.313(7), Florida Statute (2002).

2. In addition to the restrictions on outside employment that School Board Rule 6Gx13-4C-1.17, Employment - Nonschool, places on employees, no School Board employee shall have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties, or that would impede the full and faithful discharge of his or her public duties. Section 112.313.(7)(a), Florida Statute (2002).

3. Guidelines for Avoidance of Conflict of Interest

To avoid conflicts of interests or the appearance of such as it relates to personal purchases or private contracting, School Board employees will adhere to the following guidelines. These guidelines apply to all School Board employees as defined in School Board Rule 6Gx13-4A-1.213 (II) entitled "Code of Ethics- Application."

- a. These guidelines apply to any contractual relationship, excluding purchases made in a private capacity of goods or services at a price and upon terms available to similarly situated members of the general public. All other contracts, including all those for negotiated prices and terms, will adhere to the following guidelines as the general availability to the public is not obvious or apparent.
- b. When entering into a transaction or contractual relationship as described above, all School Board employees will make the following inquiries to the entity with whom they are contracting:



E. Disclosure or Use of Certain Information No School Board employee shall disclose or use information not available to members of the general public and gained by reason of his or her official position for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity. Section 112.313(8), Florida Statutes (2002).

F. Employment After Termination

School Board employees are prohibited from personally representing another person or entity or acting as an agent or attorney for compensation in connection with any matter in which Miami-Dade County Public Schools is interested for two (2) years after the School Board employees' service terminates. Section 112.313(9), Florida Statutes (2002).

1. This restriction applies to all school senior level employees classified as Managerial Exempt Personnel, Pay Grade 22 and above, Dade County School Administrators Association, Pay Grade 47 and above, and other equivalent positions.
2. Exception to this provision is provided by statute for the purpose of collective bargaining, and may be granted to former school district employees who are employees or agents of not-for-profit organizations, other governmental agencies or those whose business relationship is determined by the School Board to be in the best interest of the school district.
3. Miami-Dade County Public Schools shall be prohibited from entering into any business relations or continue an existing business relationship with any person or entity determined to have engaged in a violation of the restriction contained in this provision.
4. In addition to penalties outlined in Section IV below, penalties for violation of this provision include a civil penalty equal to the compensation that the employee received for the prohibited conduct.

III. Self-Reporting Requirement

All School Board employees, upon initial hire and annually thereafter, shall certify that they will abide by the requirements of this Board rule, and that they will self-report any relationship that may implicate a potential conflict of interest or other violations of this rule. The certification shall be according to a process determined by the Office of Human Resources, Miami-Dade County Public Schools.

IV. Penalties

Penalties for violation of this rule and/or violations of the Code of Ethics include dismissal from employment; suspension from employment for not more than ninety (90) days without pay; demotion; reduction in salary level; forfeiture of no more than one-third salary per month for no more than twelve (12) months; civil penalty not to exceed \$10,000; restitution of any pecuniary benefits received because of the violation committed; and public censure and reprimand. Section 112.317, Florida Statutes (2002).

Specific Authority: 1001.41(1)(2); 1001.42(22); 1001.43(10) F.S.

Law Implemented, Interpreted, or Made Specific: 112.313; 112.317 F.S.

**CERTIFICATE OF CONFLICT OF INTEREST INQUIRY**

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(Print your name)

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1. Does the business entity with whom I am contracting have a contractual relationship with the School Board for more than \$500?
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I understand this inquiry is not required for non-negotiated purchases made in a private capacity of goods or services at a price and upon terms available to similarly situated members of the general public. I understand that if the individual or entity answers either question in the affirmative, it is an indication that a conflict of interest may exist. I am aware I may find more information at <http://www.ethics.state.fl.us>, website for the Florida Commission on Ethics.

I have read, understand and agree to abide by the above mentioned rules and guidelines.

\_\_\_\_\_  
Date Your Signature

- In the past year I have abided by the guidelines and have received NO AFFIRMATIVE RESPONSES.
- or
- In the past year I have abided by the guidelines and RECEIVED AN AFFIRMATIVE RESPONSE to either question. Please list the business entity's or individual's name, address and the date of inquiry. Please indicate if a written legal opinion was sought from the School Board Attorney.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Date Your Signature

\_\_\_\_\_  
Your Title, Position or Relationship with the  
Miami-Dade County Public Schools

\_\_\_\_\_  
Employee Number and Work Location  
Number, if applicable

**PLEASE RETURN THIS CERTIFICATE TO** Office of Human Resources, Recruiting,  
Performance Management VIA SCHOOL MAIL OR BY FACSIMILE (305-995-7013).  
Office of Human Resources, Recruiting, and Performance Management  
Work Location #9311, 1500 Biscayne Boulevard, Annex Suite 241, Miami, FL 33132