



Superintendent of Schools
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MEMORANDUM

TO: The Honorable Chair and Members of the School Board

CC: Alberto M. Carvalho, Superintendent of Schools

FROM: Walter J. Harvey, School Board Attorney 

DATE: December 9, 2014

SUBJECT: Supplemental Information on Board Agenda Items H-14 and H-15 for December 10, 2014

On December 8, 2014, Agenda Items H-14 presented by Ms. Raquel Regalado, School Board member and H-15, presented by Mr. Carlos Curbelo, School Board member, were both published as "good cause" items for the December 10, 2014, Board meeting.¹ Agenda Item H-14 was withdrawn during the Innovation, Efficiency, and Governmental Relations committee meeting. The Board member has indicated that a revised item will be submitted prior to the School Board meeting.

This memorandum is being provided to the Board in response to questions raised by School Board members during the School Board committee meetings held on December 8, 2014, where both items were discussed. This memorandum solely addresses policy and process implications based on the manner in which the items have been presented to the Board. It does not address either the substance or the merits of either item.

I. APPLICABILITY AND IMPLICATIONS OF SCHOOL BOARD POLICY 0156

¹ Section § 120.525(2), F.S. (2014) requires that: ". . . After the agenda has been made available, a change shall be made only for good cause, as determined by the person designated to preside, and stated in the record. Notification of such change shall be at the earliest practicable time." Pursuant to School Board Policy 0165.1, "after the agenda has been made available, a change shall be made only for good cause, as determined by the Chair, and stated in the record. Notification of such change shall be at the earliest practicable time. . ."

Withdrawn Item H-14 ("UTD Lawsuit") sought the Board's approval to join as a named plaintiff in a lawsuit filed by the UTD on December 5, 2014. See *United Teachers of Dade and Karla Hernandez-Mats v. Carlos A. Gimenez, in his capacity as the Mayor of Miami-Dade County*, Circuit Court Case No. 14-_____. The lawsuit requests that the Circuit Court declare that the County's Mayor has violated the Constitution of the State of Florida by not properly funding the operations of the Value Adjustment Board ("VAB") and a writ of mandamus compelling the Mayor to adequately fund the VAB. Item H-15 ("Florida Tax Scholarship Lawsuit") requests that the Board adopt a Resolution formally opposing a pending lawsuit challenging Florida's Tax Credit Scholarship Program and urges the "plaintiffs to withdraw their lawsuit." See *McCall v. Rick Scott, et al.*, Leon County Circuit Court Case No. 2014-CA-002282.

Each of these items seek Board involvement in pending litigation and therefore must comply with Board Policy 0156 requiring them to "*be reviewed and approved by the Board Attorney prior to agenda publication and include a statement that the Board Attorney has been consulted and agrees with or recommends the proposed action.*"² As can be clearly determined, neither Item H-14 nor Item H-15 adhere to the procedural requirements mandated by Policy 0156.

II. SCHOOL BOARD LEGISLATIVE PROGRAM

At the School Board meeting of October 7, 2014, the Board approved Revised Agenda Item E-76 ("Legislative Programs"), which included as part of the Board's Legislative Program the following: "Support increased accountability measures for all publicly funded school choice options; oppose all publicly funded programs that lack equitable and sufficient accountability measures; and oppose implementation of additional or any increases in funding for voucher programs while requiring more accountability from schools receiving Florida Tax Credit Scholarship (FTCS) funding."

The *McCall* lawsuit, which was filed by numerous plaintiffs, including statewide organizations, seeks a judicial determination that the Florida Tax Credit Scholarship program is unconstitutional on several grounds, some of which are similar to those

² The noun "involvement" is a derivative of "involve," is defined as: "to have or include (someone or something) as a part of something; to cause (someone) to be included in some activity, situation, etc. ; to cause (someone) to take part in something; to cause (someone) to be associated with someone or something. . ." *Merriam-Webster's Online Dictionary*, m-w.com, (2014); ". . . (of a situation or event) include as a necessary part or result. . . cause to experience or participate in an activity or situation." *The Concise Oxford English Dictionary*, Revised Tenth Edition (2001). While the involvement sought in the litigation in Agenda Item H-15 is less clear than that in Agenda Item H-14, it is sufficient to implicate School Board Policy 0156 and its procedural requirements

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identified in the Board's Legislative Program. For these reasons, approval of a resolution similar to the one contemplated in Item H-15, may conflict with the Board's prior approved Legislative Program. Should the Board wish to support Agenda Item H-14, it should first amend or clarify its Legislative Program with regard to continued funding for FTCS before adopting the resolution specified in Item H-14. The latter may also be addressed through a deferral of any discussion of Agenda Item H-14.

Should you have any questions, please do not hesitate to contact me.

WJH/LMG/MLM