



## REPEAL 47 POLICIES IN CHAPTER FOUR

**4-B** I recommend that the Board adopt the repeal of 47 specified Policies in Chapter Four, which chapter is entitled “General Provisions.” I further recommend that Chapter Four be renamed “Administrative Proceedings.”

[Contact: Gerald A. Williams, Esq., and Bruce A. Harris, Esq., PX 48500.]

### **Repeal-Adoption**

### **CONSENT ITEM**

- The Board approved development of this repeal at the first reading on March 28, 2007.
- The 47 Policies specified here have been made obsolete by the State’s adoption of the Uniform Rules of Procedure under the Florida Administrative Procedure Act pursuant to Fla. Stat. § 120.54(5).
- The State’s Uniform Rules of Procedure, in Florida Administrative Code Chapters 28-101 through 28-110, *to the extent applicable to school districts*, will apply to proceedings under the Administrative Procedure Act (Chapter 120) in this District. The Uniform Rules are available on DOAH’s web site at <http://www.doah.state.fl.us/internet/usedDocs/Revised%20Uniform%20Rules%20-%202007.doc>.
- The other six Policies in Chapter Four will be updated and transferred to other chapters.
- Chapter Four will be renamed “Administrative Proceedings.”

## REPEAL 47 POLICIES IN CHAPTER FOUR

(Repealing 4.102, 4.103, 4.105, 4.106, 4.107, 4.108, 4.109, 4.110, 4.111, 4.113, 4.120, 4.121, 4.122, 4.123, 4.124, 4.125, 4.126, 4.127, 4.128, 4.129, 4.130, 4.132, 4.133, 4.134, 4.135, 4.140, 4.141, 4.150, 4.151, 4.152, 4.201, 4.202, 4.203, 4.204, 4.205, 4.206, 4.207, 4.208, 4.209, 4.301, 4.302, 4.303, 4.401, 4.402, 4.403, 4.404, and 4.405. These Policies, as they will be deleted, are set forth below).

The other six Policies in Chapter Four (4.101, 4.104, 4.112, 4.114, 4.131, and 4.210) will be updated and transferred to other chapters).

### 4.102

#### PRESIDING OFFICER

~~Unless otherwise provided, the School Board shall conduct all hearings.~~

Authority: 120.53(1), 230.22, FS  
Implemented: 120.57  
History: ~~New: 8/4/82; Repealed~~ \_\_\_ / \_\_\_ /2007

### 4.103

#### CLERK OF THE SCHOOL BOARD

- ~~1. The term "Clerk of the School Board" or "Clerk" shall mean that person designated by the School Board as Executive Secretary, Board Minutes Office, and whose duties include but are not limited to maintaining records of proceedings before the School Board.~~
- ~~2. The Clerk, or its designee, receives, docket and maintains all petitions, charges, pleadings and other legal documents filed with the School Board; issues subpoenas; assembles, certifies, and transmits records on appeal to Appellate Courts for review; responds to requests for information or copies of documents relating to School Board cases; bills and collects monies for records on appeal and reproduces the documents; certifies orders of the School Board; and prepares and maintains an index of School Board decisions.~~
- ~~3. The office of the Clerk of the School Board is located at The School Board of Palm Beach County, 3323 Belvedere Road, West Palm Beach, Florida 33402.~~

Authority: 120.53(1), 230.22, FS  
Implemented: 120.52(9), 120.53(1), FS  
History: ~~New: 8/4/82; Repealed~~ \_\_\_ / \_\_\_ /2007

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**4.105**

**COMPUTATION OF TIME**

~~In computing any periods of time referred to in these rules or contained in any order or ruling of the School Board or the Legal Advisor, the day of the act, event, or occurrence from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, legal holiday, or any day the School Board offices are closed, in which event the time period shall run until the end of the next day which is neither a Saturday, Sunday, legal holiday, or day the School Board offices are closed. All time periods are measured by calendar days except where working days are expressly indicated.~~

Authority: 120.53(1), 230.22, FS  
Implemented: 120.57, FS  
History: ~~New: 8/4/82; Repealed \_\_\_/\_\_\_/2007~~

**4.106**

**PARTIES**

~~Parties in any proceeding conducted in accordance with these rules are petitioners, respondents, or intervenors. Parties shall be entitled to receive copies of all pleadings, motions, notices, orders and other matters filed in a proceeding. According to the nature of the proceeding, the term "party" may include the Superintendent or School Board.~~

Authority: 120.53(1), 230.22, FS  
Implemented: 120.57, FS  
History: ~~New: 8/4/82; Repealed \_\_\_/\_\_\_/2007~~

**4.107**

**APPEARANCES**

~~A party may be represented by an attorney or other qualified representative or may appear on his own behalf. If a party is represented by a person who is not an attorney, the Legal Advisor shall make diligent inquiry to assure that the representative is capable of preserving the rights of the party.~~

Authority: 120.53(1), 230.22, FS  
Implemented: 120.57, 120.62(2), FS  
History: ~~New: 8/4/82; Repealed \_\_\_/\_\_\_/2007~~

**4.108**

**CONSOLIDATION**

~~If there are separate matters before the School Board which involve similar issues of law or fact, or identical parties, the matters may be consolidated if it appears that consolidation would promote the just, speedy and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a~~

72 ~~party. Any party to a proceeding may request consolidation with the other proceedings, or the Legal~~  
73 ~~Advisor or School Board may order separate proceedings to be consolidated.~~

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75 Authority: 120.53(1), 230.22, FS

76 Implemented: 120.57

77 History: ~~New: 8/4/82; Repealed \_\_\_\_/\_\_\_\_/2007~~

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#### 4.109

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#### JOINDER OF PARTIES

82 ~~If it appears that the determination of the rights of parties in a proceeding will necessarily involve a~~  
83 ~~determination of the substantial interests of persons who are not parties, the School Board itself or the~~  
84 ~~legal Advisor upon motion of a party or petition for intervention may enter an order requiring that the~~  
85 ~~absent person be notified of the proceeding and be given an opportunity to be joined as a party of record.~~

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87 Authority: 120.53(1), 230.22, FS

88 Implemented: 120.57

89 History: ~~New: 8/4/82; Repealed \_\_\_\_/\_\_\_\_/2007~~

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#### 4.110

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#### DISQUALIFICATION

94 ~~The School Board, any member thereof, or the Legal Advisor may be disqualified from serving in a~~  
95 ~~proceeding for bias, prejudice, interest, or other causes for which a judge may be recused. All motions for~~  
96 ~~disqualification shall be made in accordance with procedures set forth in Chapter 38, FS, and shall be~~  
97 ~~filed at least five days prior to the date scheduled for the final hearing.~~

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99 Authority: 120.53(1), 230.22, FS

100 Implemented: 120.53(1), 120.71, FS

101 History: ~~New: 8/4/82; Repealed \_\_\_\_/\_\_\_\_/2007~~

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#### 4.111

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#### FILING AND SERVICE OF PAPERS

106 ~~1. The term "filed" means actual receipt by the Clerk of a document. All documents whether~~  
107 ~~intended for the School Board, any member thereof, Legal Advisor, or other designated agent,~~  
108 ~~are to be filed with the Clerk. Submission of any document to the Legal Advisor shall not itself~~  
109 ~~constitute filing with the School Board. Any document filed shall be accompanied by (1) copy and~~  
110 ~~proof of simultaneous service upon the other parties to the proceeding.~~

111 ~~2. Whenever any party is required to file a document with the School Board, any member thereof,~~  
112 ~~Legal Advisor, or other designated agent, the party shall simultaneously serve copies of the~~  
113 ~~document upon the other parties to the proceeding. A certificate attesting to such service by mail~~  
114 ~~or personal delivery shall be provided to the School Board with the document at the time it is filed~~  
115 ~~with the Clerk. Service by mail shall be deemed completed upon mailing.~~

116  
117 Authority: 120.53(1), 230.22, FS  
118 Implemented: 120.57  
119 History: ~~New: 8/4/82; Repealed \_\_\_/\_\_\_/2007~~  
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122 **4.113**

123 **POINT OF ENTRY INTO PROCEEDINGS**

124 ~~Unless otherwise provided by law or School Board Policy or Rule:~~

- 125 1. ~~Persons requesting a hearing on a School Board decision which does or may determine their~~  
126 ~~substantial interest shall file a petition with the School Board within fourteen (14) days of receipt~~  
127 ~~of written notice of the decision, or within fourteen (14) days of notice of intent to render such~~  
128 ~~decision, whichever occurs first. Whenever possible, the School Board shall issue a written notice~~  
129 ~~of intent to render a decision and allow persons who may be substantially affected thereby~~  
130 ~~fourteen (14) days in which to request a hearing. The official School Board agenda as maintained~~  
131 ~~in the Clerk's office shall constitute written notice of intent to render a decision.~~  
132 2. ~~Any person who fails to timely request a hearing within the time limits prescribed herein shall~~  
133 ~~have waived his right subsequently to request a hearing on such matters and the contents of the~~  
134 ~~notice and any attachments thereto shall be deemed by the School Board to be true for the~~  
135 ~~purposes of taking final agency action.~~

136  
137 Authority: 120.53(1), 230.22, FS  
138 Implemented: 120.57, FS  
139 History: ~~New: 8/4/82; Repealed \_\_\_/\_\_\_/2007~~  
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142 **4.120**

143 **INITIATION OF FORMAL PROCEEDINGS**

- 144 1. ~~Initiation of formal proceedings shall be made by petition to the School Board. The term petition~~  
145 ~~as used herein includes any application or other document which expresses a request for formal~~  
146 ~~proceedings. Each petition should be printed, typewritten or otherwise duplicated in legible form.~~  
147 ~~Unless printed, the impression shall be on one side of the paper only and lines shall be double-~~  
148 ~~spaced and indented.~~  
149 2. ~~All petitions filed under these rules should contain:~~  
150 a. ~~The name and address of the petitioner or petitioners, and an explanation of his/her~~  
151 ~~substantial interest which will be affected by the School Board determination.~~  
152 b. ~~A statement of all disputed issues of material fact; if there are none, the petition must so~~  
153 ~~indicate.~~  
154 c. ~~A concise statement of the ultimate facts alleged as well as the rules and statutes which~~  
155 ~~entitle the petitioner to relief.~~  
156 d. ~~A demand for relief to which the petitioner deems himself entitled.~~  
157 e. ~~Other information which the petitioner contends is material.~~  
158 f. ~~Signature of petitioner or petitioners.~~  
159 g. ~~Date.~~

- 160 3. ~~Upon receipt of a petition for formal proceedings, the School Board shall either accept or deny the~~  
161 ~~petition, and if accepted shall conduct the hearing.~~
- 162     ~~a. A petition may be denied if the petitioner does not state adequately a material, factual~~  
163 ~~allegation, such as a substantial interest in the agency determination, or if the petition is~~  
164 ~~untimely.~~
- 165     ~~b. The agency shall promptly give written notice to all parties of the action taken on the~~  
166 ~~petition stating reasons therefor.~~
- 167 4. ~~Initiation of formal proceedings in matters including recommendation by Superintendent for~~  
168 ~~employee suspension or dismissal shall be governed by the provisions of Chapter 3, School~~  
169 ~~Board Policy.~~

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171 Authority:           120.53(1), 230.22, FS  
172 Implemented:       120.57, FS  
173 History:            ~~New: 8/4/82; Repealed~~ \_\_\_/\_\_\_/2007

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176 **4.121**

177 **AMENDMENT OF PETITIONS**

178 ~~The Superintendent may amend his/her petition or recommendation at any time provided that any such~~  
179 ~~amended petition or recommendation be served upon parties no less than fourteen (14) days prior to the~~  
180 ~~date set for the hearing. All other amendments shall be by order of the School Board.~~

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182 Authority:           120.53(1), 230.22, FS  
183 Implemented:       120.57, FS  
184 History:            ~~New: 8/4/82; Repealed~~ \_\_\_/\_\_\_/2007

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187 **4.122**

188 **ANSWER**

189 ~~A respondent or interviewer may file an answer which may contain any available affirmative defenses. If~~  
190 ~~an answer is filed, it shall be filed within twenty (20) days of service of the petition.~~

191

192 Authority:           120.53(1), 230.22, FS  
193 Implemented:       120.57, FS  
194 History:            ~~New: 8/4/82; Repealed~~ \_\_\_/\_\_\_/2007

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197 **4.123**

198 **MOTIONS**

- 199 1. ~~Written motions and responses thereto may be filed with the School Board pursuant to this~~  
200 ~~chapter. Oral motions may be made during a hearing and rulings thereon shall be made on the~~  
201 ~~record.~~

- 202       2. ~~With the exception of oral motions made at a hearing, all motions shall be in writing, shall~~  
203       ~~specifically state the relief sought and grounds therefor, and where appropriate shall be~~  
204       ~~accompanied by legal memoranda or affidavits. Any answering memoranda or affidavits shall be~~  
205       ~~filed within the School Board within ten (10) days after service of the moving papers, unless~~  
206       ~~otherwise allowed by the Legal Advisor. The Legal Advisor may rule upon motions filed prior to~~  
207       ~~the commencement of hearings or refer the motions to the School Board for its ruling.~~
- 208       3. ~~All motions, and rulings and orders thereon, shall be part of the record of the proceedings.~~
- 209       4. ~~Rulings by the Legal Advisor made prior to the commencement of hearings may be challenged to~~  
210       ~~the School Board at the commencement of the hearing and prior to presentation of evidence.~~

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212 Authority:       120.53(1), 230.22, FS  
213 Implemented:    120.57, FS  
214 History:         New: 8/4/82; Repealed \_\_\_/\_\_\_/2007

#### 4.124

#### PRE-HEARING CONFERENCES

220 ~~The Legal Advisor may conduct and request the parties to have one or more pre-hearing conferences for~~  
221 ~~the purpose of hearing arguments on pending motions, clarifying and simplifying issues, discussing the~~  
222 ~~possibilities of settlement of the issues, examining exhibits and documents, exchanging names and~~  
223 ~~addresses of witnesses, and resolving other procedural matters.~~

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225 Authority:       120.53(1), 230.22, FS  
226 Implemented:    120.57, FS  
227 History:         New: 8/4/82; Repealed \_\_\_/\_\_\_/2007

#### 4.125

#### INTERVENTION

233 ~~Persons other than the original parties to a pending proceeding who have a substantial interest in the~~  
234 ~~proceeding, and who desire to become parties, may petition the Legal Advisor for leave to intervene.~~  
235 ~~Petitions for leave to intervene must be filed at least twenty (20) days before the commencement of~~  
236 ~~hearings and shall be in conformance with the provisions of this chapter and shall also include allegations~~  
237 ~~sufficient to demonstrate that the intervenor is entitled to participate in the proceeding and that the~~  
238 ~~substantial interests of the intervenor are subject to determination or will be affected through the~~  
239 ~~proceeding.~~

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241 Authority:       120.53(1), 230.22, FS  
242 Implemented:    120.57, FS  
243 History:         New: 8/4/82; Repealed \_\_\_/\_\_\_/2007

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**4.126**  
**DISCOVERY**

~~Parties may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.400, Florida Rules of Civil Procedure. The Legal Advisor may issue appropriate orders to effectuate the purposes of discovery and to prevent delay including the recommendation to the School Board of entry of an order pursuant to Rule 4.129.~~

Authority: 120.53(1), 230.22, FS  
Implemented: 120.57, FS  
History: New: 8/4/82; Repealed      /      /2007

**4.127**  
**NOTICE OF HEARING**

~~The School Board shall set the time and place for all hearings. The Chairman of the School Board shall issue and cause to be served written notice thereof by U.S. Mail on all parties of record. No less than fourteen (14) days' notice shall be given for commencement of a hearing on the merits of the petition unless as otherwise agreed by the parties.~~

Authority: 120.53(1), 230.22, FS  
Implemented: 120.57, FS  
History: New: 8/4/82; Repealed      /      /2007

**4.128**  
**CONTINUANCES**

~~The School Board may in its discretion grant a continuance of a hearing for good cause shown. The Legal Advisor, upon stipulation of all parties, may in his discretion grant a continuance. Requests for continuance shall be made in writing. Except in cases of extreme emergency, requests for continuance shall be made at least five (5) days prior to the date noticed for the hearing.~~

Authority: 120.53(1), 230.22, FS  
Implemented: 120.57, FS  
History: New: 8/4/82; Repealed      /      /2007

**4.129**  
**DISMISSAL AND DEFAULT**

~~The failure or refusal of a party to comply with the rules or any lawful order may be cause for dismissing the petition or for entry of a final order against the defaulting party.~~

Authority: 120.53(1), 230.22, FS



288 Implemented: 120.57, FS  
289 History: New: 8/4/82; Repealed \_\_\_/\_\_\_/2007

**4.130**  
**SUBPOENAS**

- 294 ~~1. Subpoenas may be issued by any member of the School Board. Subpoena forms shall be~~  
295 ~~supplied by the Clerk or the Legal Advisor.~~
- 296 ~~2. Subpoenas requiring the attendance of witnesses or production of records, files, and memoranda~~  
297 ~~from any place in the state, at any designated place of hearing before the School Board, for the~~  
298 ~~purpose of taking testimony of such witness or inspection of documents, shall be issued upon~~  
299 ~~written application of any party. The application for such subpoena shall state the name and~~  
300 ~~address of the witness for whom the subpoena is to be issued and the time and place for the~~  
301 ~~witness to appear.~~
- 302 ~~3. Any party or person against whom a subpoena is directed may file a motion to quash or limit the~~  
303 ~~subpoena in accordance with Rule 4.123 of this chapter. The motion shall set forth the grounds~~  
304 ~~relied upon.~~
- 305 ~~4. A subpoena may be served by any person authorized by law to serve process or by any person~~  
306 ~~who is not a party and who is of majority age. Service shall be made by delivering a copy thereof~~  
307 ~~to the person named in the subpoena. Proof of such service shall be made by affidavit of the~~  
308 ~~person making service if not served by an officer authorized by law to do so.~~

309  
310 Authority: 120.53(1), 230.22, FS  
311 Implemented: 120.57, 120.58, FS  
312 History: New: 8/4/82; Repealed \_\_\_/\_\_\_/2007

**4.132**  
**WITNESSES**

- 317 ~~1. All witnesses shall be sworn and subject to examination and cross-examination.~~
- 318 ~~2. The School Board may allow members of the general public to appear as witnesses at a hearing~~  
319 ~~and to present oral or written communications without the necessity of being a party of intervenor.~~  
320 ~~The School Board may set fair and reasonable conditions on such appearances, and the~~  
321 ~~communications shall be subject to cross-examination, challenge and rebuttal.~~

322  
323 Authority: 120.53(1), 230.22, FS  
324 Implemented: 120.57, 120.58, FS  
325 History: New: 8/4/82; Repealed \_\_\_/\_\_\_/2007

**4.133**  
**EVIDENCE**

- 329  
330 ~~1. Oral evidence shall be taken only on oath or affirmation.~~

- 331       2. ~~Each party shall have the right to present evidence relevant to the issues; to cross-examine~~  
332       ~~opposing witnesses, to impeach any witness regardless of which party first called him to testify,~~  
333       ~~and to rebut the evidence presented against it.~~
- 334       3. ~~School Board members shall have the right to examine any witness.~~
- 335       4. ~~Any relevant evidence shall be admitted if it is the sort of evidence on which reasonably prudent~~  
336       ~~persons are accustomed to rely in the conduct of their affairs. Hearsay evidence may be used to~~  
337       ~~supplement or explain other evidence but shall not be sufficient in itself to support a finding~~  
338       ~~unless it would be admissible over objection in civil actions. The rules of privilege shall be~~  
339       ~~effective to the same extent that they are now or hereafter may be recognized in civil actions.~~  
340       ~~Irrelevant and unduly repetitious evidence shall be excluded.~~

341

342 Authority:       120.53(1), 230.22, FS

343 Implemented:    120.57, 120.58, FS

344 History:         New: 8/4/82; Repealed \_\_\_ / \_\_\_ /2007

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348                   **4.134**  
349                   **RECORDATION**

350 ~~The School Board shall have the responsibility of preserving the testimony at final hearings. Proceedings~~  
351 ~~shall be recorded by a certified court reporter or by recording instruments. Any party to a hearing, at its~~  
352 ~~own expense, may provide a certified court reporter if the School Board does not. The Legal Advisor may,~~  
353 ~~in his or her discretion, provide a certified court reporter. At hearings during which the services of a court~~  
354 ~~reporter have been retained, any party who wishes a written transcript of the testimony shall order the~~  
355 ~~same at its own expense. If a court reporter records the proceedings, the recordation shall be the official~~  
356 ~~transcript.~~

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358 Authority:       120.53(1), 230.22, FS

359 Implemented:    120.57

360 History:         New: 8/4/82; Repealed \_\_\_ / \_\_\_ /2007

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364                   **4.135**  
365                   **VENUE**

366 ~~Whenever possible, hearings conducted pursuant to this chapter shall be held in Palm Beach County or~~  
367 ~~at the place most convenient to all parties as determined by the School Board.~~

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369 Authority:       120.53(1), 230.22, FS

370 Implemented:    120.57

371 History:         New: 8/4/82; Repealed \_\_\_ / \_\_\_ /2007

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4.140

**POST-HEARING MEMORANDA**

~~All parties may submit proposed findings of fact, conclusions of law, and recommended orders, or legal briefs on the issues within a time designated by the School Board or Legal Advisor.~~

Authority: 120.53(1), 230.22, FS  
Implemented: 120.57  
History: ~~New: 8/4/82; Repealed~~ / ~~\_\_\_\_\_~~ / ~~\_\_\_\_\_~~ / 2007

4.141

**FINAL ORDERS**

- ~~1. A final order shall be entered within ninety (90) days after the hearing is concluded or receipt of the hearing transcript, whichever is later. The final order shall include a caption, time and place of the hearing, appearances entered at the hearing, statement of the issues, findings of fact, conclusions of law and a statement of final School Board action.~~
- ~~2. If the final hearing has been conducted by other than the School Board, the School Board shall issue its final order within ninety (90) days of receipt of the recommended order.~~
- ~~3. The adoption of a final order by the School Board shall be at a public meeting and this meeting shall not be a de novo review, but shall be confined to the evidence submitted at the hearing together with the proposed findings of fact, conclusions of law and orders, and closing arguments of the parties.~~
- ~~4. If a party submits proposed findings of fact to the School Board, the final order shall include a ruling on each proposed finding of fact as well as a brief statement of fact; provided however, subordinate, cumulative, irrelevant, immaterial or unnecessary proposed facts may be rejected in the final order by a statement to that effect.~~

Authority: 120.53(1), 230.22, FS  
Implemented: 120.57, 120.59, FS  
History: ~~New: 8/4/82; Repealed~~ / ~~\_\_\_\_\_~~ / ~~\_\_\_\_\_~~ / 2007

4.150

**INFORMAL PROCEEDINGS**

- ~~1. Proceedings conducted under Section 120.57(2), FS, and this part shall be informal in nature and shall not involve disputed issues of material fact unless otherwise agreed by the parties.~~
- ~~2. An informal proceeding may be granted by the School Board upon written request submitted within fourteen (14) days after written notice of agency action or receipt of written notice of intent to render a decision, whichever occurs first. The notice shall state the time limit for requesting a hearing.~~
- ~~3. If a hearing is held, the School Board may:
  - a. administer oaths and affirmations;
  - b. rule upon offers of proof and receive relevant evidence;
  - c. regulate the course of the hearing;~~

- 419 d. ~~enter any order to carry out the provisions of this chapter and Chapter 120, FS;~~  
420 e. ~~make or receive offers of settlement, stipulation and adjustment.~~

421  
422 Authority: 120.53(1), 230.22, FS  
423 Implemented: 120.57, FS  
424 History: ~~New: 8/4/82; Repealed \_\_\_/\_\_\_/2007~~  
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#### 4.151

#### SUBMISSION OF EVIDENCE

- 429 1. ~~Within thirty (30) days of commencing the proceeding, the School Board shall provide all affected~~  
430 ~~persons with an opportunity to submit written statements or other pleadings as provided in~~  
431 ~~Section 120.57(2)(a)2, FS.~~  
432 2. ~~The affected persons shall be given fifteen (15) days to respond to evidence submitted pursuant~~  
433 ~~to Subsection (1).~~

434  
435 Authority: 120.53(1), 230.22, FS  
436 Implemented: 120.57, FS  
437 History: ~~New: 8/4/82; Repealed \_\_\_/\_\_\_/2007~~  
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#### 4.152

#### FINAL ORDER

442 ~~The final order shall be issued in compliance with this chapter.~~  
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444 Authority: 120.53(1), 230.22, FS  
445 Implemented: 120.57, FS  
446 History: ~~New: 8/4/82; Repealed \_\_\_/\_\_\_/2007~~  
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#### 4.201

#### COMMENCEMENT OF PROCEEDINGS

451 ~~Proceedings held for the adoption, amendment or appeal of a School Board rule shall be conducted~~  
452 ~~according to the provisions of Chapter 120, FS, and these rules. Rule making proceedings are initiated by~~  
453 ~~the substantial interest in a School Board rule. A proceeding shall be deemed to have been initiated upon~~  
454 ~~publication of notice by the School Board.~~

455  
456 Authority: 120.53(1), 230.22, FS  
457 Implemented: 120.53(1), 120.54, FS  
458 History: ~~New: 8/4/82; Repealed \_\_\_/\_\_\_/2007~~  
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**4.202**

**NOTICE OF PROCEEDINGS AND THE PROPOSED RULES**

- ~~1. Except for adoption of emergency rules, notice of its intention to adopt, amend, or repeal a rule shall be given by the School Board as provided in Section 120.54(1), FS.~~
- ~~2. Upon the publication of notice of its intention to adopt, amend or repeal a rule, a draft of the proposed rule shall be made available to the public.~~

Authority: 120.53(1), 230.22, FS  
Implemented: 120.53(1), 120.54, FS  
History: ~~New: 8/4/82; Repealed~~ \_\_\_ / \_\_\_ /2007

**4.203**

**CONTENT OF NOTICE**

~~The notice must conform to the content requirements of Section 120.54(1), provided however, the text of the proposed rule may be included in the notice.~~

Authority: 120.53(1), 230.22, FS  
Implemented: 120.54, FS  
History: ~~New: 8/4/82; Repealed~~ \_\_\_ / \_\_\_ /2007

**4.204**

**PETITIONS TO INITIATE RULE-MAKING PROCEEDINGS**

- ~~1. All petitions for the initiation of rule-making proceedings pursuant to Section 120.54(5), FS, must contain the name and address of the petitioner, specific reasons for adoption, amendment or repeal, the specific action requested, the date submitted, and shall specify the proposed rule.~~
- ~~2. Any interested person may file a statement in support of or in opposition to any petition for the initiation of rule-making proceedings. The interested persons shall furnish the petitioner with a copy upon filing of the statement.~~
- ~~3. Any interested person may submit a reply to the statement in subsection (2) prior to School Board action. The interested person shall furnish the petitioner and the person filing under subsection (2) with a copy of the filing of the reply.~~
- ~~4. Petitions, statements, and replies shall be filed with the Clerk of the School Board.~~

Authority: 120.53(1), 230.22, FS  
Implemented: 120.54, FS  
History: ~~New: 8/4/82; Repealed~~ \_\_\_ / \_\_\_ /2007

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4.205

**SCHOOL BOARD ACTION ON PETITIONS TO INITIATE RULE-MAKING PROCEEDINGS**

1. ~~Upon receipt of any petition for the initiation of rule-making pursuant to Section 120.54(5), FS, the Clerk shall assign the petition an identification number.~~
2. ~~If the School Board determines that the petitioner does not have a substantial interest in the School Board rule, or does not have the interest as stated in the petition, the School Board may forthwith deny the petition, and shall notify the petitioner in writing the reasons for the denial. If the School Board determines that the petition should be granted, the School Board shall issue appropriate notice and initiate necessary action. If the School Board determines that rule-making should not be initiated, a written statement setting forth the reasons for such determination shall be provided to the petitioner.~~

Authority: 120.53(1), 230.22, FS  
Implemented: 120.54, FS  
History: New: 8/4/82; Repealed \_\_\_/\_\_\_/2007

4.206

**RULE-MAKING MATERIALS**

~~After the publication of notice initiating rule-making, the School Board shall make available for public inspection and shall provide upon request, copies of the text of the proposed rule, or any amendment, or repeal of any existing rule.~~

Authority: 120.53(1), 230.22, FS  
Implemented: 120.54, FS  
History: New: 8/4/82; Repealed \_\_\_/\_\_\_/2007

4.207

**RULE-MAKING PROCEEDING-HEARING**

1. ~~If the proposed rule does not relate exclusively to organization, practice or procedure, the School Board shall provide, upon request, a public hearing for presentation of evidence, arguments and oral statements, within the reasonable conditions and limitations imposed by the School Board to avoid duplication, irrelevant comments, unnecessary delay or disruption of the proceedings.~~
2. ~~A public hearing shall be held if an affected person files a request for a hearing with the clerk within fourteen (14) days after the publication of the notice. The School Board may decide on its own initiative to hold a public hearing and shall publish notice of this fact.~~
3. ~~The School Board shall prepare an agenda for the hearing that provides affected persons with a reasonable time to present evidence, argument, oral statements, and other information.~~
4. ~~The School Board may take official recognition of any material that is of common and general knowledge authoritatively well settled and free from uncertainty. If the material is officially recognized by the School Board, it is deemed to be admissible without the necessity of the offering party's presenting evidence. This material shall be part of the record and all affected~~

546 persons shall be given a reasonable opportunity to examine and offer evidence and argument in  
547 opposition.

548 ~~5. Upon request of any affected person, the School Board shall cause to be made a transcript of the~~  
549 ~~proceeding and copies of the transcript of the proceeding shall be available to the public. Cost of~~  
550 ~~preparing the transcript and having the proceeding recorded shall be paid by the requesting~~  
551 ~~person. The requesting person shall be required to deposit in advance with the School Board an~~  
552 ~~amount sufficient to pay the reasonably estimated cost for transcription and recording. A copy of~~  
553 ~~the transcript shall be available to the public at cost.~~

554 ~~6. The School board or any member thereof may preside at a hearing held pursuant to Section~~  
555 ~~120.54(3), FS.~~

556

557 Authority: 120.53(1), 230.22, FS

558 Implemented: 120.54, FS

559 History: New: 8/4/82; Repealed \_\_\_ / \_\_\_ /2007

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#### 4.208

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#### INCORPORATION BY REFERENCE

564 Any rule, standard, specification, policy, or similar material which is generally available to affected  
565 persons may be incorporated in a rule by reference.

566

567 Authority: 120.53(1), 230.22, FS

568 Implemented: 120.54, FS

569 History: New: 8/4/82; Repealed \_\_\_ / \_\_\_ /2007

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#### 4.209

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#### EMERGENCY RULE ADOPTION

574

1. ~~The School Board may adopt an emergency rule, if:~~

575

~~a. The School Board finds that immediate danger to the public health, safety and welfare  
576 exists which requires immediate School Board action; and~~

577

~~b. The School Board complies with the requirements of Section 120.54, FS.~~

578

~~2. Unless it defeats the purpose of an emergency rule, the School Board should notify all affected  
579 persons before adopting an emergency rule. The School Board shall permit, upon request, all  
580 affected persons to present testimony, evidence, and submit written statements.~~

581

~~3. Upon the request of any affected person, the School Board shall cause a transcript to be made of  
582 the proceeding and shall compile a record consisting of the transcript, copies of the notice and  
583 any other matter or information considered by the School Board in adopting the emergency rule.  
584 The cost of preparing the transcript and having the proceeding recorded shall be paid by the  
585 requesting person who shall be required to deposit in advance with the School Board an amount  
586 sufficient to pay the reasonably estimated cost for transcription and recording.~~

587

~~4. Notwithstanding subsections (2) and (3) above, the School Board may use any procedure which  
588 is fair under the circumstances in the adoption of an emergency rule as long as it protects the  
589 public interests.~~

590

591 Authority: 120.53(1), 230.22, FS  
592 Implemented: 120.54, FS  
593 History: ~~New: 8/4/82; Repealed \_\_\_\_ / \_\_\_\_ /2007~~  
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596 **4.301**

597 **DECLARATORY STATEMENTS, GENERAL**

- 598 ~~1. Any person may seek a declaratory statement as to the applicability of a specific statutory~~  
599 ~~provision or of any rule or order of the School Board as it applies to that person in his particular~~  
600 ~~set of circumstances only. The School Board shall notify the person of the disposition of the~~  
601 ~~petition, briefly explaining the School Board's response.~~
- 602 ~~2. The petition seeking a declaratory statement shall be filed in writing with the clerk and shall~~  
603 ~~provide substantially the following information.~~
- 604 ~~a. The name of petitioner.~~
  - 605 ~~b. Address of petitioner.~~
  - 606 ~~c. School Board rule, order on which declaratory statement is sought.~~
  - 607 ~~d. Description of how this rule, order or statute may or does affect the petitioner in his/her~~  
608 ~~particular set of circumstances only.~~
  - 609 ~~e. Signature of petitioner.~~
  - 610 ~~f. Date.~~
- 611

612 Authority: 120.53(1), 230.22, FS  
613 Implemented: 120.565, FS  
614 History: ~~New: 8/4/82; Repealed \_\_\_\_ / \_\_\_\_ /2007~~  
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617 **4.302**

618 **PURPOSE AND USE OF DECLARATORY STATEMENT**

619 ~~A declaratory statement is a means for resolving a controversy, or answering questions or doubts of the~~  
620 ~~applicability of any statutory provision, rule or order as it does, or may, apply to petitioner and his~~  
621 ~~particular circumstances only.~~

622 ~~The potential impact upon petitioner's interests shall be alleged in order for petitioner to show the~~  
623 ~~existence of a controversy, question or doubt.~~

624

625 Authority: 120.53(1), 230.22, FS  
626 Implemented: 120.565, FS  
627 History: ~~New: 8/4/82; Repealed \_\_\_\_ / \_\_\_\_ /2007~~  
628  
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630 **4.303**

631 **SCHOOL BOARD DISPOSITION**

632 ~~The School Board may at its discretion conduct a hearing to dispose of a submitted petition. If a hearing is~~



633 conducted, it shall be pursuant to the procedural rules of the School Board or as otherwise agreed upon  
634 by the School Board and the parties.

635

636 Authority: 120.53(1), 230.22, FS

637 Implemented: 120.565, FS

638 History: New: 8/4/82; Repealed \_\_\_\_ / \_\_\_\_ /2007

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641 **4.401**

642 **GENERAL**

643 All School Board action regarding the application for issuance, suspension, annulment, withdrawal and  
644 revocation of licenses, including the prequalification of contractors, shall be governed by this part and by  
645 Sections 120.57 and 120.60, FS.

646

647 Authority: 120.53(1), 230.22, FS

648 Implemented: 120.57, 120.50, FS

649 History: New: 8/4/82; Repealed \_\_\_\_ / \_\_\_\_ /2007

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653 **4.402**

654 **APPLICATION FOR LICENSE**

655 1. ~~Unless otherwise provided, the Superintendent shall initiate action on application for a license in~~  
656 ~~accordance with the provisions of this part and of Section 120.62(2), FS.~~

657 2. ~~When applicable, the School Board shall inform the applicant, in writing, why the application is~~  
658 ~~incomplete. Upon the return of a completed application, a supplemental application, or the~~  
659 ~~requested information, the Superintendent shall reinstate action in accordance with the provisions~~  
660 ~~of this part and of Section 120.60(2), FS.~~

661

662 Authority: 120.53(1), 230.22, FS

663 Implemented: 120.57, 120.60, FS

664 History: New: 8/4/82; Repealed \_\_\_\_ / \_\_\_\_ /2007

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667 **4.403**

668 **DENIAL OF LICENSE**

669 1. ~~Unless the School Board has already held a hearing on the application for a license, the~~  
670 ~~Superintendent or his designee shall inform the individual or entity submitting an application of~~  
671 ~~the right to a hearing on the denial of the application, unless the application form contained a~~  
672 ~~clear statement of such right accruing in the event of denial.~~

673 2. ~~Requests for a hearing and any hearing on denial of a license shall comply with the procedures in~~  
674 ~~this chapter and, unless otherwise provided by law, the applicant shall have the burden of~~  
675 ~~establishing entitlement to the license.~~

676  
677 Authority: 120.53(1), 230.22, FS  
678 Implemented: 120.57, 120.60, FS  
679 History: New: 8/4/82; Repealed \_\_\_/\_\_\_/2007  
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682 **4.404**

683 **SUSPENSION, REVOCATION, ANNULMENT OR WITHDRAWAL**

- 684 ~~1. Prior to the institution of proceedings to suspend, revoke, annul or withdraw any license, the~~  
685 ~~Superintendent shall provide at least fourteen (14) days' notice by certified mail or actual service~~  
686 ~~to the licensee of facts or conduct which warrant such action.~~
- 687 ~~2. The Superintendent shall submit a recommendation to the School Board and include a copy~~  
688 ~~thereof with the notice. The recommendation shall contain the specific facts which are relied on to~~  
689 ~~establish the reasons for suspension, revocation, annulment or withdrawal; and, the notice shall~~  
690 ~~contain a statement that the licensee has a right to request a hearing to be conducted in~~  
691 ~~accordance with this chapter, to be represented by counsel, or other qualified representative, to~~  
692 ~~take testimony, to call and cross-examine witnesses and to have subpoena and subpoena duces~~  
693 ~~tecum issued on his behalf if he requests a hearing.~~
- 694 ~~3. Requests for a hearing shall be filed in accordance with this chapter.~~
- 695 ~~4. In such case, the Superintendent's recommendation shall be considered to be the petition, and~~  
696 ~~the Superintendent shall have the burden of proving that grounds exist which warrant the action~~  
697 ~~proposed to be taken against the licensee.~~

698  
699 Authority: 120.53(1), 230.22, FS  
700 Implemented: 120.57, 120.60, FS  
701 History: New: 8/4/82; Repealed \_\_\_/\_\_\_/2007  
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704 **4.405**

705 **EMERGENCY ACTION**

- 706 ~~1. The School Board or Superintendent may summarily suspend, limit, or restrict a license if it finds~~  
707 ~~that immediate serious danger to the public health, safety or welfare requires the emergency~~  
708 ~~suspension, limitation or restriction.~~
- 709 ~~2. The fourteen (14) day notice requirement does not apply and shall not be construed to prevent a~~  
710 ~~hearing at the earliest time practicable upon request of an aggrieved party.~~
- 711 ~~3. Unless otherwise provided by law, within twenty (20) days after emergency action taken pursuant~~  
712 ~~to subsection (1), the Superintendent shall initiate a formal suspension or revocation proceeding~~  
713 ~~in compliance with this chapter.~~

714  
715 Authority: 120.53(1), 230.22, FS  
716 Implemented: 120.57, 120.60, FS  
717 History: New: 8/4/82; Repealed \_\_\_/\_\_\_/2007

Legal Signoff:

The Legal Department has reviewed the proposed repeal of the specified Policies in Chapter 4 and finds this proposal legally sufficient for development by the Board.

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Attorney

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Date