



POLICY 6.144

5-I I recommend that the Board approve development of the proposed **revised** Policy 6.144, entitled “Commercial Nondiscrimination.”

[Contact: Elizabeth McBride, PX 47673 and Michelle Adrewin, PX 48508.]

Development

CONSENT ITEM

- This revision updates the non-discrimination language. *See 1, 2, 4(f) and 14.*

POLICY 6.144

COMMERCIAL NONDISCRIMINATION

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1. **Purpose and Intent.**-- It is the intent of the School District of Palm Beach County to avoid becoming a passive participant in private sector commercial discrimination by refusing to engage in business with business firms that discriminate in the solicitation, selection, hiring, or treatment of vendors, suppliers, subcontractors, or commercial customers on the basis of race, ~~gender, gender identity or expression, religion, national origin, ethnicity, sexual orientation, age,~~ color, religion, sex, ethnicity, national origin, age, sexual orientation, gender identity or expression, genetic information, marital status, parental status or disability by providing a procedure for receiving, investigating, and resolving complaints of discrimination filed against business firms that have submitted a bid or proposal for, have been selected to engage in, or are engaged in doing business with the School District.

2. **Policy Statement.** -- It is the policy of the School Board of Palm Beach County not to accept bids or proposals from, nor to engage in business with, any business firm that has discriminated on the basis of race, ~~gender, gender identity or expression, religion, national origin, ethnicity, sexual orientation, age,~~ color, religion, sex, ethnicity, national origin, age, sexual orientation, gender identity or expression, genetic information, marital status, parental status or any other form of unlawful discrimination in its solicitation, selection, hiring, or treatment of another business.

3. **Scope.**-- This Policy applies to all business firms and to all contracts to which the School Board is a party. Additionally, as to third-party contracts, every contract and other agreement between the School Board of Palm Beach County and any governmental agency, quasi-governmental agency, corporation, developer, or contractor, under which the agency, corporation, developer, or contractor receives any fiscal assistance from or through the School District for the purpose of contracting with businesses to perform real estate development, renovation, maintenance, or other services, must require the agency, corporation, developer, or contractor to comply with this Policy in awarding and administering that contract or agreement.

4. **Definitions.**-- As used herein, the following terms have these meanings unless the context clearly requires a different meaning:
 - a. *ALJ* means an administrative law judge assigned by the Florida Department of Administrative Hearings (DOAH) to conduct hearings under this Policy.

 - b. *Business firm* means any person, firm, sole proprietorship, partnership, corporation, limited liability company, or other business entity or combination thereof, including any financial institution, developer, consultant, prime

38 contractor, subcontractor, supplier, or vendor, that has submitted a bid or
39 proposal, has been selected to do business, or is doing business with the
40 School District, including selling or leasing supplies, or goods, or providing
41 construction, financial, professional, or other services, in return for a fee or any
42 other form of compensation.

43 c. *Chief Counsel* means the Chief Counsel to the School Board of Palm Beach
44 County.

45 d. *Contract* means an agreement with any business firm (including a sole
46 proprietorship) let by or on behalf of the School Board or School District for
47 that business firm to sell or lease supplies or goods, or provides construction,
48 financial, professional, or other services, in return for a fee or any other form of
49 compensation.

50 e. *Contractor* means any business firm (including a sole proprietorship) that
51 holds a contract let by or on behalf of the School Board or School District. (For
52 purposes of the nondiscrimination clause in section (13) below, the term
53 "contractor" also includes a subcontractor holding a subcontract as defined in
54 subsection (4)(n)).

55 f. *Discrimination* means, in general, any disadvantage, difference, distinction, or
56 preference in the solicitation, selection, hiring, or treatment of a vendor,
57 supplier, subcontractor, commercial customer, or any other business entity on
58 the basis of race, ~~gender, gender identity or expression, religion, national~~
59 ~~origin, ethnicity, sexual orientation, age, color, religion, sex, ethnicity, national~~
60 ~~origin, age, sexual orientation, gender identity or expression, genetic~~
61 ~~information, marital status, parental status~~ or any other form of unlawful
62 discrimination regarding the characteristics of that business entity's employees
63 or owners. However, discrimination does not include otherwise lawful efforts,
64 including those specified in Policy No. 6.143 ("Diversity and Equitable
65 Utilization in Business") to remedy the effects of discrimination that has
66 occurred or is occurring in the marketplace.

67 g. *DOAH* means the Florida Department of Administrative Hearings.

68 h. *Financial Institution* means any person or entity engaged in the business of
69 lending money, guaranteeing loans, extending credit, securing bonds, or
70 providing venture or equity capital to business entities, or that offers financial
71 services in connection with School District projects or the administration of
72 School District government. For example, financial institution includes any
73 bank, savings and loan association, venture capital company, insurance
74 company, bonding company, mortgage company, credit union, and broker.

75 i. *Includes or Including* means by way of illustration and not by way of limitation.

- 76 j. *ODBP* means the School District's Office of Diversity in Business Practices.
- 77 k. *Presiding officer* means, as appropriate to the context, the ALJ presiding over
78 a formal hearing under Fla. Stat. § 120.57(1), or the designated hearing officer
79 presiding over an informal hearing under Fla. Stat. § 120.57(2).
- 80 l. *School Board* or *Board* means The School Board of Palm Beach County,
81 Florida, the policy-making governing body of the School District of Palm Beach
82 County, which has authority to enter into contracts on behalf of the District
83 School System.
- 84 m. *School District* or *District* means the School District of Palm Beach County and
85 those agencies, departments, boards, commissions, government authorities,
86 and corporations authorized to act on behalf of, or as agent for, the School
87 District of Palm Beach County.
- 88 n. *Subcontract* means an agreement for the performance of a particular portion
89 of work to be performed under a contract with the School Board or School
90 District.
- 91 5. **Complaints of Discrimination.** -- Any adult person, business entity, association,
92 organization, or government agency may file an administrative complaint with the
93 ODBP Director stating facts showing or tending to show that a business firm has
94 engaged in discrimination against one or more other businesses. Within 60 days
95 after the action prohibited by this policy, the person, business entity, association,
96 organization or government agency may file an administrative complaint using the
97 Discrimination Complaint Form located on the [Office of Diversity in Business](#)
98 [Practices website](#) and the [Department of Records Management website](#). Within ten
99 business days of the receipt of the complaint, the ODBP Director shall notify the
100 business firm against whom the complaint was filed that a complaint has been
101 received.
- 102 6. **Investigation of Complaints.** -- An investigative unit shall exist in the ODBP to
103 review and investigate discrimination complaints filed under this Policy. The ODBP
104 Director shall exercise his or her best judgment to assign ODBP staff persons
105 and/or outside consultants to the investigative unit as necessary to conduct such
106 investigations in a comprehensive, fair, competent, and efficient manner. (As may
107 be necessary due to an unexpectedly time-intensive investigation, the ODBP
108 Director may also request that the Superintendent temporarily assign other existing
109 qualified District personnel to assist in this unit.) The investigative unit shall seek all
110 relevant evidence from the complainant, from the respondent business firm, and
111 from external sources relating to the allegations of the complaint.
- 112 7. **Initial Findings and Recommendations.** -- The ODBP Director will make initial
113 findings and recommendations.

- 114 a. Based upon the investigative unit's review and investigation, the ODBP
115 Director shall make an initial non-binding finding on each allegation stated in
116 the complaint, that either:
- 117 i. the investigation produced sufficient evidence to find that the alleged
118 discrimination did take place ("sustained");
- 119 ii. the investigation failed to produce sufficient evidence to find that the
120 alleged discrimination took place ("not sustained");
- 121 iii. the investigation produced sufficient evidence to find that the alleged
122 discrimination did not take place ("unfounded");
- 123 iv. the investigation produced sufficient evidence to establish that the
124 complainant knowingly made one or more false or frivolous allegations
125 ("false or frivolous");
- 126 v. the allegation has been settled or otherwise resolved by agreement of the
127 interested parties ("settled or resolved"); or
- 128 vi. the allegation has been withdrawn ("withdrawn").
- 129 b. The ODBP Director (who may seek legal advice from the Chief Counsel or
130 designated associate counsel) shall recommend appropriate action to be
131 taken. That action may include additional investigation of the complaint,
132 sanctions, remedies, or other action consistent with this Policy.
- 133 c. The initial non-binding findings and recommendations shall be made by the
134 ODBP Director within 120 calendar days of receipt of the complaint. The
135 ODBP Director may extend this time limit, after consultation with the Chief
136 Counsel, for good cause or if the parties agree to mediate a settlement to the
137 complaint.
- 138 d. The ODBP Director shall notify the complainant and the business firm within
139 five business days of the issuance of the initial non-binding findings and
140 recommendations, including an explanation of the reasons justifying the initial
141 findings.
- 142 8. **Hearings.** -- If the ODBP Director determines that one or more allegations of
143 discrimination within the scope of this Policy are sustained, the business firm
144 against whom the allegations were made shall be entitled to an administrative
145 hearing on the allegations and an opportunity to participate in the hearing.
- 146 a. Pursuant to F. A.C. r. 28-106.111(1), the ODBP shall notify the business firm
147 of the information required by Fla. Stat. § 120.569(1) (e. g., that the business
148 firm may request a hearing; the procedure for obtaining a hearing; and the

149 pertinent time limits). The ODBP's notice shall also advise whether mediation
150 under Fla. Stat. § 120.573 is available as an alternative remedy, and if
151 available, that pursuit of mediation will not adversely affect the right to
152 administrative proceedings in the event mediation does not result in a
153 settlement.

154 b. If the business firm desires a hearing, the business firm must request an
155 administrative hearing by filing a written request with the Board Clerk within
156 twenty-one (21) calendar days of notice of the initial findings and
157 recommendations, pursuant to F. A.C. r. 28-106.111(2). The request for
158 hearing must contain all items required by Fla. Stat. § 120.569(2)(c) and F.
159 A.C. r. 28-106.201(2) (for formal hearings involving disputed issues of material
160 fact, under Fla. Stat. § 120.57(1)) or F. A.C. r. 28-106.301(2) (for informal
161 hearings not involving disputed issues of material fact, under Fla. Stat. §
162 120.57(2)).

163 i. If the business firm properly and timely requests an administrative hearing
164 involving disputed issues of material fact, the Chief Counsel shall notify
165 DOAH within fifteen (15) days of receiving the request, and DOAH will
166 assign an ALJ to conduct the administrative hearing.

167 A. DOAH will inform the business firm, the ODBP Director, and the
168 Chief Counsel of the time and place for the hearing. The
169 administrative hearing shall be held by the ALJ within ninety calendar
170 days of the assignment of the ALJ. Whenever possible, the hearing
171 shall be held in the place most convenient to all parties as
172 determined by the ALJ.

173 B. The hearing shall be conducted in a manner consistent with Chapter
174 120, Florida Statutes and any due process rights to which any party
175 is entitled. At a minimum, the hearing shall afford all parties an
176 opportunity to present witnesses, conduct direct and cross-
177 examination of witnesses, introduce relevant evidence, submit briefs,
178 and present oral argument. At such hearing, the ODBP Director or
179 the Director's designee shall present the evidence gathered by the
180 investigative unit. Findings shall be made by the ALJ based upon a
181 preponderance of all evidence presented.

182 ii. If the business firm properly and timely requests an administrative hearing
183 not involving disputed issues of material fact, the Chief Counsel shall
184 notify DOAH within fifteen (15) days of receiving the request.
185 Notwithstanding Policy 4.150, the informal hearing will be conducted
186 under Fla. Stat. § 120.57(2) and F. A.C. r. 106.301 - 106.307 by a hearing
187 officer who is a volunteer outside attorney selected by the
188 Superintendent/designee (or, if such volunteer attorney is not available,

- 189 the hearing may be conducted by any available Board member).
- 190 c. The presiding officer may issue protective orders for good cause to limit, or
191 otherwise impose conditions on, access by any person to any document in the
192 possession of a party, including any document in the School District's
193 possession if exempt from the Public Records Act or in the record of the
194 hearing if that particular document in the record is exempt from the Public
195 Records Act.
- 196 d. If the business firm fails to properly and timely request an administrative
197 hearing, the ODBP shall notify the business firm that the request is dismissed
198 pursuant to Fla. Stat. § 120.569(2)(c) and that the initial non-binding findings
199 and recommendations will become the final administrative decision of the
200 School District pending review and approval by the Superintendent and School
201 Board, and the School Board's action will constitute final agency action.
- 202 e. Pursuant to Fla. Stat. § 120.57(4), unless precluded by law, informal
203 disposition may be made of any proceeding by stipulation, agreed settlement,
204 or consent order, instead of through a hearing.
- 205 9. **Disposition after a Hearing.**-- Within thirty (30) days after the hearing or receipt of
206 the hearing transcript, whichever is later, the presiding officer shall file a
207 recommended order with the School Board including a caption, time and place of
208 hearing, statement of the issues, findings of fact and conclusions of law, and
209 recommendations for final agency action. The presiding officer's recommended
210 order may affirm or reject the initial findings and recommendations, may substitute
211 different findings and recommend appropriate remedies, or may return the case to
212 the ODBP Director for further investigation and findings to be completed within a
213 period of time specified by the presiding officer.
- 214 a. The presiding officer's recommended order shall be based upon a
215 preponderance of the evidence contained in the hearing record, and shall
216 reflect the evidentiary basis for its findings.
- 217 b. The Board will allow each party fifteen (15) days in which to submit written
218 exceptions to the recommended order.
- 219 c. Pursuant to Fla. Stat. §§ 120.569 and 120.57, the School Board shall issue
220 the final order within ninety (90) days, unless the time is waived by all parties,
221 after:
- 222 i. the hearing is concluded (defined as the time when the hearing officer
223 submits the recommended order to the Board and the recommended
224 order is mailed to all parties), if an informal hearing is conducted by the
225 District;

- 226 ii. a recommended order is submitted to the Board and mailed to all parties,
227 if the hearing is conducted by an ALJ; or
- 228 iii. the District has received the written and oral material it has authorized to
229 be submitted, if there has been no hearing.
- 230 d. The final order shall be considered at a regularly scheduled School Board
231 meeting. The School Board may adopt the presiding officer's recommended
232 order as its Final Order. The School Board in its final order may, for good
233 cause, reject or modify the conclusions of law in the recommended order but
234 may not reject or modify the findings of fact unless the School Board first
235 determines from a review of the complete record that the findings of fact were
236 not based upon competent substantial evidence or that the proceedings on
237 which the findings were based did not comply with essential requirements of
238 law. The School Board may reduce or increase the recommended penalty in a
239 recommended order, but may do so only with a review of the complete record.
240 In cases where an ALJ provided a recommended order, the Board will provide
241 a copy of its final order to DOAH within fifteen (15) days after the order is filed
242 with the Board clerk.
- 243 10. **Remedies and Penalties.**-- When a complaint is sustained in a final order (upon
244 the Superintendent's recommendation in cases where the business firm did not
245 properly and timely request a hearing, or upon the Board's consideration of a
246 recommended order after a hearing that was properly and timely requested), the
247 School Board shall direct the Superintendent to take one or more of the following
248 actions:
- 249 a. any remedy provided by law or agreed to by the respondent business firm, the
250 complainant, and the School District;
- 251 b. implementation of procedures by the School District for debarment of the
252 respondent business firm from bidding and contract awards on School District
253 projects for a period of not more than three years under Board Policy 6.14(5);
- 254 c. rescission, suspension or termination of any current contract between the
255 respondent business firm and the School District;
- 256 d. exercise of any other rights or remedies available to the School District under
257 any current contract between the respondent business firm and the School
258 District, including, but not limited to, liquidated damages; or
- 259 e. referral of the matter for criminal prosecution for fraud and other violations of
260 Florida law if appropriate under the circumstances.
- 261 11. **Sanctions for Filing a False or Frivolous Complaint.**-- If the ODBP Director
262 determines that one or more allegations of a complaint are false and that the

263 complainant knew them to be false when filed, or that one or more of the
264 allegations of a complaint are so frivolous that they are wholly without merit, the
265 ODBP Director may refuse to review or investigate any complaint filed under this
266 Policy by the same complainant for a period of up to three years. The ODBP
267 Director may also recommend to the presiding officer or the School Board that the
268 complainant be required to reimburse the District in the amount of the costs
269 incurred for the investigation and review of the false or frivolous complaint. In the
270 event the presiding officer requires such reimbursement to the School District, the
271 complainant shall have the same right of appeal to the School Board as a
272 respondent business firm has under section (9)(d) of this Policy.

273 12. **Judicial Review.**-- A party who, after having exhausted all administrative remedies
274 available, is aggrieved by a final order of the School Board may seek judicial
275 review of such final order pursuant to Fla. Stat. § 120.68.

276 13. **Mandatory Nondiscrimination Contract Clause.**-- Every written contract and
277 subcontract (with the possible exception of certain unalterable form contracts or
278 software licenses required by certain corporations or items purchased on State of
279 Florida contracts or piggyback contracts from other agencies, as determined by the
280 Superintendent/designee) shall contain a nondiscrimination clause that reads as
281 follows: "Contractor shall not discriminate on the basis of race, gender, gender
282 identity or expression, religion, national origin, ethnicity, sexual orientation, age, or
283 disability in the solicitation, selection, hiring, or treatment of subcontractors,
284 vendors, suppliers, or commercial customers. Contractor shall provide equal
285 opportunity for subcontractors to participate in all of its public sector and private
286 sector subcontracting opportunities, provided that nothing contained in this clause
287 shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace
288 discrimination that has occurred or is occurring in the marketplace, such as those
289 specified in Palm Beach County School Board Policy 6.143. Contractor
290 understands and agrees that violation of this clause is a material breach of the
291 contract and may result in contract termination, debarment, or other sanctions."

292 14. **Contractor Bid Requirements.**-- All requests for bids or proposals issued by the
293 School District shall include a clause that reads as follows: "As part of its bid or
294 proposal, Bidder or Proposer shall provide to the School District a list of all
295 instances within the past ten years where a complaint was filed or pending against
296 Bidder or Proposer in a legal or administrative proceeding alleging that Bidder or
297 Proposer discriminated on the basis of race, gender, ~~gender identity or expression,~~
298 ~~religion, national origin, ethnicity, sexual orientation, age,~~ color, religion, sex,
299 ethnicity, national origin, age, sexual orientation, gender identity or expression,
300 genetic information, marital status, parental status or disability against its
301 subcontractors, vendors, suppliers, or commercial customers, and a description of
302 the status or resolution of each such complaint, including any remedial action
303 taken."

- 304 15. **Contract Disclosure Requirements.** -- Every written contract issued by the
305 School District and subcontract (with the possible exception of certain unalterable
306 form contracts or software licenses required by certain corporations or items
307 purchased on State of Florida contracts or piggyback contracts from other
308 agencies, as determined by the Superintendent/designee) shall include a clause
309 that reads as follows: "Upon the School District's request, and upon the filing of a
310 complaint against Contractor pursuant to Palm Beach County School Board Policy
311 6.144, Contractor agrees to provide the School District, within sixty calendar days,
312 a truthful and complete list of the names of all subcontractors, vendors, and
313 suppliers that Contractor has used in the past five years on any of its contracts that
314 were undertaken within the Palm Beach County School District relevant geographic
315 market as defined Palm Beach County School Board Policy No. 6.143, including
316 the total dollar amount paid by Contractor for each subcontract or supply contract.
317 Contractor agrees to fully cooperate in any investigation conducted by the School
318 District pursuant to this Policy. Contractor understands and agrees that violation of
319 this clause is a material breach of the contract and may result in contract
320 termination, debarment, and other sanctions."
- 321 16. **Other Legal Remedies.**-- The remedies provided by this Policy are in addition to
322 any other statutory, legal, or equitable remedies that may be available and are not
323 intended to be prerequisite to or exclusive of any other remedies.
- 324 17. **Non-Interruption of Performance.**-- The filing of a complaint, or the investigation
325 or hearing or recommended order concerning a complaint under this Policy shall
326 not hinder or affect the award of, performance of, or payment on a contract prior to
327 a final administrative order that establishes a violation.
- 328

329 18. **Rules of Construction**-- The provisions of this Policy are to be liberally construed
330 to accomplish its policies and purposes.

331 a. **Mandatory, Prohibitory, and Permissive Terms**

332 i. Mandatory terms.-- "Must" and "shall" are each mandatory terms used to
333 express a requirement or to impose a duty.

334 ii. Prohibitory terms.-- "Must not", "may not", and "no. . . may" are each
335 mandatory negative terms used to establish a prohibition.

336 iii. Permissive terms.-- "May" is permissive.

337 iv. Number.-- The singular includes the plural and vice versa.

338 b. **Severability**-- All provisions of this Policy are severable. If a court determines
339 that a word, phrase, clause, sentence, paragraph, subsection, section, or other
340 provision is invalid or that the application of any part of the provision to any
341 person or circumstances is invalid, the remaining provisions and the
342 application of those provisions to other persons or circumstances shall remain
343 in full force and effect to the maximum extent practicable.

344 c. **Time Computations**

345 i. Computation of time After an Act, Event, or Default

346 A. In computing any period of time prescribed by this Policy, the day of
347 the act, event, or default after which the designated period of time
348 begins to run is not included.

349 B. If the period of time allowed is more than seven (7) days,
350 intermediate Saturdays, Sundays, and legal holidays (observed by
351 the School District's administrative center) are counted.

352 C. If the period of time allowed is seven (7) days or less, intermediate
353 Saturdays, Sundays, and legal holidays (observed by the School
354 District's administrative center) are not counted.

355 D. The last day of the period so computed is included unless it is a
356 Saturday, Sunday, or legal holiday, in which event the period runs
357 until the end of the next day that is not a Saturday, Sunday, or legal
358 holiday observed by the School District's administrative center.

359 ii. Computation of Time Before a Day, Act, or Event

360 A. In determining the latest day for performing an act that is required by

361 this Policy to be performed a prescribed number of days before a
362 certain day, act, or event, all days preceding that day, including
363 intervening Saturdays, Sundays, and legal holidays observed by the
364 School District's administrative center, are counted in the number of
365 days so prescribed.

366 B. The latest day is included in the determination unless it is a
367 Saturday, Sunday, or legal holiday, in which event the latest day is
368 the first preceding day that is not a Saturday, Sunday, or legal
369 holiday observed by the District's administrative center.

370 19. **Administrative Guidance**-- The Superintendent may issue Bulletins or guidelines
371 to explain the application of this Policy or to guide the District in carrying out this
372 Policy.

373 STATUTORY AUTHORITY: Fla. Stat. §§ [1001.41\(2\)](#); [1001.42\(22\)](#); [1001.43\(2\)](#), [\(6\)](#)

374 LAWS IMPLEMENTED: Fla. Stat. §§ [1001.41\(1\)](#), [\(3\)](#); [1001.42\(10\)\(i\)](#); [1001.43\(2\)](#)

375 HISTORY: 5/31/2006; 7/29/2009; ___/___2011

Legal Signoff:

The Legal Department has reviewed proposed Policy 6.144 and finds it legally sufficient for development by the Board.

Attorney

Date