



POLICY 6.144

4-I I recommend that the Board adopt the proposed revised Policy 6.144, entitled “Commercial Nondiscrimination.”

[Contact: Dr. Otelia DuBose, PX 48508.]

Adoption

CONSENT ITEM

- The Board approved development of this revised Policy at the development reading on June 3, 2009.
- This policy satisfies the requirement in paragraph (2)(e)(ii) of Board Policy 6.143 (“Diversity and Equitable Utilization in Business,” adopted on May 11, 2005), which requires the Board to adopt “a commercial non-discrimination policy that ensures that companies doing business with the School Board do not discriminate in the solicitation, selection, or treatment of subcontractors, suppliers, vendors, or commercial customers on the basis of race, color, sex or national origin.”
- The two revisions to the policy are as follows:
 - Gender identity or expression has been added to the listings of protected classes.
 - A complaint form has been included in the policy for anyone seeking to file a discrimination complaint with the Office of Diversity in Business Practices. (See Section 5). A copy of the complaint form is attached to the policy.

POLICY 6.144

COMMERCIAL NONDISCRIMINATION

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3 1. **Purpose and Intent.**-- It is the intent of the School District of Palm Beach County
4 to avoid becoming a passive participant in private sector commercial discrimination
5 by refusing to engage in business with business firms that discriminate in the
6 solicitation, selection, hiring, or treatment of vendors, suppliers, subcontractors, or
7 commercial customers on the basis of race, gender, gender identity or expression,
8 religion, national origin, ethnicity, sexual orientation, age, or disability by providing
9 a procedure for receiving, investigating, and resolving complaints of discrimination
10 filed against business firms that have submitted a bid or proposal for, have been
11 selected to engage in, or are engaged in doing business with the School District.
- 12 2. **Policy Statement.** -- It is the policy of the School Board of Palm Beach County not
13 to accept bids or proposals from, nor to engage in business with, any business firm
14 that has discriminated on the basis of race, gender, gender identity or expression,
15 religion, national origin, ethnicity, sexual orientation, age, disability, or any other
16 form of unlawful discrimination in its solicitation, selection, hiring, or treatment of
17 another business.
- 18 3. **Scope.** -- This Policy applies to all business firms and to all contracts to which the
19 School Board is a party. Additionally, as to third-party contracts, every contract
20 and other agreement between the School Board of Palm Beach County and any
21 governmental agency, quasi-governmental agency, corporation, developer, or
22 contractor, under which the agency, corporation, developer, or contractor receives
23 any fiscal assistance from or through the School District for the purpose of
24 contracting with businesses to perform real estate development, renovation,
25 maintenance, or other services, must require the agency, corporation, developer,
26 or contractor to comply with this Policy in awarding and administering that contract
27 or agreement.
- 28 4. **Definitions.**-- As used herein, the following terms have these meanings unless the
29 context clearly requires a different meaning:
- 30 a. *ALJ* means an administrative law judge assigned by the Florida Department of
31 Administrative Hearings (DOAH) to conduct hearings under this Policy.
- 32 b. *Business firm* means any person, firm, sole proprietorship, partnership,
33 corporation, limited liability company, or other business entity or combination
34 thereof, including any financial institution, developer, consultant, prime
35 contractor, subcontractor, supplier, or vendor, that has submitted a bid or
36 proposal, has been selected to do business, or is doing business with the
37 School District, including selling or leasing supplies, or goods, or providing
38 construction, financial, professional, or other services, in return for a fee or any

- 39 other form of compensation.
- 40 c. *Chief Counsel* means the Chief Counsel to the School Board of Palm Beach
41 County.
- 42 d. *Contract* means an agreement with any business firm (including a sole
43 proprietorship) let by or on behalf of the School Board or School District for
44 that business firm to sell or lease supplies or goods, or provides construction,
45 financial, professional, or other services, in return for a fee or any other form of
46 compensation.
- 47 e. *Contractor* means any business firm (including a sole proprietorship) that
48 holds a contract let by or on behalf of the School Board or School District. (For
49 purposes of the nondiscrimination clause in section (13) below, the term
50 “contractor” also includes a subcontractor holding a subcontract as defined in
51 subsection (4) (n).)
- 52 f. *Discrimination* means, in general, any disadvantage, difference, distinction, or
53 preference in the solicitation, selection, hiring, or treatment of a vendor,
54 supplier, subcontractor, commercial customer, or any other business entity on
55 the basis of race, gender, gender identity or expression, religion, national
56 origin, ethnicity, sexual orientation, age, disability, or any other form of
57 unlawful discrimination regarding the characteristics of that business entity’s
58 employees or owners. However, discrimination does not include otherwise
59 lawful efforts, including those specified in Policy No. 6.143 (“Diversity and
60 Equitable Utilization in Business”) to remedy the effects of discrimination that
61 has occurred or is occurring in the marketplace.
- 62 g. *DOAH* means the Florida Department of Administrative Hearings.
- 63 h. *Financial Institution* means any person or entity engaged in the business of
64 lending money, guaranteeing loans, extending credit, securing bonds, or
65 providing venture or equity capital to business entities, or that offers financial
66 services in connection with School District projects or the administration of
67 School District government. For example, financial institution includes any
68 bank, savings and loan association, venture capital company, insurance
69 company, bonding company, mortgage company, credit union, and broker.
- 70 i. *Includes or Including* means by way of illustration and not by way of limitation.
- 71 j. *ODBP* means the School District’s Office of Diversity in Business Practices.
- 72 k. *Presiding officer* means, as appropriate to the context, the ALJ presiding over
73 a formal hearing under Fla. Stat. § 120.57(1), or the designated hearing officer
74 presiding over an informal hearing under Fla. Stat. § 120.57(2).

75 l. *School Board* or *Board* means The School Board of Palm Beach County,
76 Florida, the policy-making governing body of the School District of Palm Beach
77 County, which has authority to enter into contracts on behalf of the District
78 School System.

79 m. *School District* or *District* means the School District of Palm Beach County and
80 those agencies, departments, boards, commissions, government authorities,
81 and corporations authorized to act on behalf of, or as agent for, the School
82 District of Palm Beach County.

83 n. *Subcontract* means an agreement for the performance of a particular portion
84 of work to be performed under a contract with the School Board or School
85 District.

86 5. **Complaints of Discrimination.** -- Any adult person, business entity, association,
87 organization, or government agency may file an administrative complaint with the
88 ODBP Director stating facts showing or tending to show that a business firm has
89 engaged in discrimination against one or more other businesses. Within 60 days
90 after the action prohibited by this policy, the person, business entity, association,
91 organization or government agency may file an administrative complaint using the
92 Discrimination Complaint Form located on the Office of Diversity in Business
93 Practices website at <http://www.palmbeach.k12.fl.us/MWBE/> and the Department
94 of _____ Records _____ Management _____ website _____ at
95 <http://www.palmbeach.k.12.fl.us\records/formssearch.asp>. Within ten business
96 days of the receipt of the complaint, the ODBP Director shall notify the business
97 firm against whom the complaint was filed that a complaint has been received.

98 6. **Investigation of Complaints.** -- An investigative unit shall exist in the ODBP to
99 review and investigate discrimination complaints filed under this Policy. The ODBP
100 Director shall exercise his or her best judgment to assign ODBP staff persons
101 and/or outside consultants to the investigative unit as necessary to conduct such
102 investigations in a comprehensive, fair, competent, and efficient manner. (As may
103 be necessary due to an unexpectedly time-intensive investigation, the ODBP
104 Director may also request that the Superintendent temporarily assign other existing
105 qualified District personnel to assist in this unit.) The investigative unit shall seek
106 all relevant evidence from the complainant, from the respondent business firm, and
107 from external sources relating to the allegations of the complaint.

108 7. **Initial Findings and Recommendations.** -- The ODBP Director will make initial
109 findings and recommendations.

110 a. Based upon the investigative unit's review and investigation, the ODBP
111 Director shall make an initial non-binding finding on each allegation stated in
112 the complaint, that either:

113 i. the investigation produced sufficient evidence to find that the alleged

- 114 discrimination did take place (“sustained”);
- 115 ii. the investigation failed to produce sufficient evidence to find that the
116 alleged discrimination took place (“not sustained”);
- 117 iii. the investigation produced sufficient evidence to find that the alleged
118 discrimination did not take place (“unfounded”);
- 119 iv. the investigation produced sufficient evidence to establish that the
120 complainant knowingly made one or more false or frivolous allegations
121 (“false or frivolous”);
- 122 v. the allegation has been settled or otherwise resolved by agreement of the
123 interested parties (“settled or resolved”); or
- 124 vi. the allegation has been withdrawn (“withdrawn”).
- 125 b. The ODBP Director (who may seek legal advice from the Chief Counsel or
126 designated associate counsel) shall recommend appropriate action to be
127 taken. That action may include additional investigation of the complaint,
128 sanctions, remedies, or other action consistent with this Policy.
- 129 c. The initial non-binding findings and recommendations shall be made by the
130 ODBP Director within 120 calendar days of receipt of the complaint. The
131 ODBP Director may extend this time limit, after consultation with the Chief
132 Counsel, for good cause or if the parties agree to mediate a settlement to the
133 complaint.
- 134 d. The ODBP Director shall notify the complainant and the business firm within
135 five business days of the issuance of the initial non-binding findings and
136 recommendations, including an explanation of the reasons justifying the initial
137 findings.
- 138 8. **Hearings.** -- If the ODBP Director determines that one or more allegations of
139 discrimination within the scope of this Policy are sustained, the business firm
140 against whom the allegations were made shall be entitled to an administrative
141 hearing on the allegations and an opportunity to participate in the hearing.
- 142 a. Pursuant to F.A.C. r. 28-106.111(1), the ODBP shall notify the business firm of
143 the information required by Fla. Stat. § 120.569(1) (e.g., that the business firm
144 may request a hearing; the procedure for obtaining a hearing; and the
145 pertinent time limits). The ODBP’s notice shall also advise whether mediation
146 under Fla. Stat. § 120.573 is available as an alternative remedy, and if
147 available, that pursuit of mediation will not adversely affect the right to
148 administrative proceedings in the event mediation does not result in a
149 settlement.

- 150 b. If the business firm desires a hearing, the business firm must request an
151 administrative hearing by filing a written request with the Board Clerk within
152 twenty-one (21) calendar days of notice of the initial findings and
153 recommendations, pursuant to F.A.C. r. 28-106.111(2). The request for
154 hearing must contain all items required by Fla. Stat. § 120.569(2)(c) and
155 F.A.C. r. 28-106.201(2) (for formal hearings involving disputed issues of
156 material fact, under Fla. Stat. § 120.57(1)) or F.A.C. r. 28-106.301(2) (for
157 informal hearings not involving disputed issues of material fact, under Fla.
158 Stat. § 120.57(2)).
- 159 i. If the business firm properly and timely requests an administrative hearing
160 involving disputed issues of material fact, the Chief Counsel shall notify
161 DOAH within fifteen (15) days of receiving the request, and DOAH will
162 assign an ALJ to conduct the administrative hearing.
- 163 A. DOAH will inform the business firm, the ODBP Director, and the
164 Chief Counsel of the time and place for the hearing. The
165 administrative hearing shall be held by the ALJ within ninety calendar
166 days of the assignment of the ALJ. Whenever possible, the hearing
167 shall be held in the place most convenient to all parties as
168 determined by the ALJ.
- 169 B. The hearing shall be conducted in a manner consistent with Chapter
170 120, Florida Statutes and any due process rights to which any party
171 is entitled. At a minimum, the hearing shall afford all parties an
172 opportunity to present witnesses, conduct direct and cross-
173 examination of witnesses, introduce relevant evidence, submit briefs,
174 and present oral argument. At such hearing, the ODBP Director or
175 the Director's designee shall present the evidence gathered by the
176 investigative unit. Findings shall be made by the ALJ based upon a
177 preponderance of all evidence presented.
- 178 ii. If the business firm properly and timely requests an administrative hearing
179 not involving disputed issues of material fact, the Chief Counsel shall
180 notify DOAH within fifteen (15) days of receiving the request.
181 Notwithstanding Policy 4.150, the informal hearing will be conducted
182 under Fla. Stat. § 120.57(2) and F.A.C. r. 106.301 - 106.307 by a hearing
183 officer who is a volunteer outside attorney selected by the
184 Superintendent/designee (or, if such volunteer attorney is not available,
185 the hearing may be conducted by any available Board member).
- 186 c. The presiding officer may issue protective orders for good cause to limit, or
187 otherwise impose conditions on, access by any person to any document in the
188 possession of a party, including any document in the School District's
189 possession if exempt from the Public Records Act or in the record of the

190 hearing if that particular document in the record is exempt from the Public
191 Records Act.

192 d. If the business firm fails to properly and timely request an administrative
193 hearing, the ODBP shall notify the business firm that the request is dismissed
194 pursuant to Fla. Stat. § 120.569(2)(c) and that the initial non-binding findings
195 and recommendations will become the final administrative decision of the
196 School District pending review and approval by the Superintendent and School
197 Board, and the School Board's action will constitute final agency action.

198 e. Pursuant to Fla. Stat. § 120.57(4), unless precluded by law, informal
199 disposition may be made of any proceeding by stipulation, agreed settlement,
200 or consent order, instead of through a hearing.

201 9. **Disposition after a Hearing.**-- Within thirty (30) days after the hearing or receipt
202 of the hearing transcript, whichever is later, the presiding officer shall file a
203 recommended order with the School Board including a caption, time and place of
204 hearing, statement of the issues, findings of fact and conclusions of law, and
205 recommendations for final agency action. The presiding officer's recommended
206 order may affirm or reject the initial findings and recommendations, may substitute
207 different findings and recommend appropriate remedies, or may return the case to
208 the ODBP Director for further investigation and findings to be completed within a
209 period of time specified by the presiding officer.

210 a. The presiding officer's recommended order shall be based upon a
211 preponderance of the evidence contained in the hearing record, and shall
212 reflect the evidentiary basis for its findings.

213 b. The Board will allow each party fifteen (15) days in which to submit written
214 exceptions to the recommended order.

215 c. Pursuant to Fla. Stat. §§ 120.569 and 120.57, the School Board shall issue
216 the final order within ninety (90) days, unless the time is waived by all parties,
217 after:

218 i. the hearing is concluded (defined as the time when the hearing officer
219 submits the recommended order to the Board and the recommended
220 order is mailed to all parties), if an informal hearing is conducted by the
221 District;

222 ii. a recommended order is submitted to the Board and mailed to all parties,
223 if the hearing is conducted by an ALJ; or

224 iii. the District has received the written and oral material it has authorized to
225 be submitted, if there has been no hearing.

226 d. The final order shall be considered at a regularly scheduled School Board
227 meeting. The School Board may adopt the presiding officer's recommended
228 order as its Final Order. The School Board in its final order may, for good
229 cause, reject or modify the conclusions of law in the recommended order but
230 may not reject or modify the findings of fact unless the School Board first
231 determines from a review of the complete record that the findings of fact were
232 not based upon competent substantial evidence or that the proceedings on
233 which the findings were based did not comply with essential requirements of
234 law. The School Board may reduce or increase the recommended penalty in a
235 recommended order, but may do so only with a review of the complete record.
236 In cases where an ALJ provided a recommended order, the Board will provide
237 a copy of its final order to DOAH within fifteen (15) days after the order is filed
238 with the Board clerk.

239 10. **Remedies and Penalties.**-- When a complaint is sustained in a final order (upon
240 the Superintendent's recommendation in cases where the business firm did not
241 properly and timely request a hearing, or upon the Board's consideration of a
242 recommended order after a hearing that was properly and timely requested), the
243 School Board shall direct the Superintendent to take one or more of the following
244 actions:

245 a. any remedy provided by law or agreed to by the respondent business firm, the
246 complainant, and the School District;

247 b. implementation of procedures by the School District for debarment of the
248 respondent business firm from bidding and contract awards on School District
249 projects for a period of not more than three years under Board Policy 6.14(5);

250 c. rescission, suspension or termination of any current contract between the
251 respondent business firm and the School District;

252 d. exercise of any other rights or remedies available to the School District under
253 any current contract between the respondent business firm and the School
254 District, including, but not limited to, liquidated damages; or

255 e. referral of the matter for criminal prosecution for fraud and other violations of
256 Florida law if appropriate under the circumstances.

257 11. **Sanctions for Filing a False or Frivolous Complaint.**-- If the ODBP Director
258 determines that one or more allegations of a complaint are false and that the
259 complainant knew them to be false when filed, or that one or more of the
260 allegations of a complaint are so frivolous that they are wholly without merit, the
261 ODBP Director may refuse to review or investigate any complaint filed under this
262 Policy by the same complainant for a period of up to three years. The ODBP
263 Director may also recommend to the presiding officer or the School Board that the
264 complainant be required to reimburse the District in the amount of the costs

265 incurred for the investigation and review of the false or frivolous complaint. In the
266 event the presiding officer requires such reimbursement to the School District, the
267 complainant shall have the same right of appeal to the School Board as a
268 respondent business firm has under section (9)(d) of this Policy.

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

272 13. **Mandatory Nondiscrimination Contract Clause.**-- Every contract and
273 subcontract shall contain a nondiscrimination clause that reads as follows:
274 "Contractor shall not discriminate on the basis of race, gender, gender identity or
275 expression, religion, national origin, ethnicity, sexual orientation, age, or disability in
276 the solicitation, selection, hiring, or treatment of subcontractors, vendors, suppliers,
277 or commercial customers. Contractor shall provide equal opportunity for
278 subcontractors to participate in all of its public sector and private sector
279 subcontracting opportunities, provided that nothing contained in this clause shall
280 prohibit or limit otherwise lawful efforts to remedy the effects of marketplace
281 discrimination that has occurred or is occurring in the marketplace, such as those
282 specified in Palm Beach County School Board Policy 6.143. Contractor
283 understands and agrees that violation of this clause is a material breach of the
284 contract and may result in contract termination, debarment, or other sanctions."

285 14. **Contractor Bid Requirements.**-- All requests for bids or proposals issued by the
286 School District shall include a clause that reads as follows: "As part of its bid or
287 proposal, Bidder or Proposer shall provide to the School District a list of all
288 instances within the past ten years where a complaint was filed or pending against
289 Bidder or Proposer in a legal or administrative proceeding alleging that Bidder or
290 Proposer discriminated on the basis of race, gender, gender identity or expression,
291 religion, national origin, ethnicity, sexual orientation, age, or disability against its
292 subcontractors, vendors, suppliers, or commercial customers, and a description of
293 the status or resolution of each such complaint, including any remedial action
294 taken."

295 15. **Contract Disclosure Requirements.**-- Every contract issued by the School
296 District shall include a clause that reads as follows: "Upon the School District's
297 request, and upon the filing of a complaint against Contractor pursuant to Palm
298 Beach County School Board Policy 6.144, Contractor agrees to provide the School
299 District, within sixty calendar days, a truthful and complete list of the names of all
300 subcontractors, vendors, and suppliers that Contractor has used in the past five
301 years on any of its contracts that were undertaken within the Palm Beach County
302 School District relevant geographic market as defined Palm Beach County School
303 Board Policy No. 6.143, including the total dollar amount paid by Contractor for
304 each subcontract or supply contract. Contractor agrees to fully cooperate in any
305 investigation conducted by the School District pursuant to this Policy. Contractor

306 understands and agrees that violation of this clause is a material breach of the
307 contract and may result in contract termination, debarment, and other sanctions.”

308 16. **Other Legal Remedies**-- The remedies provided by this Policy are in addition to
309 any other statutory, legal, or equitable remedies that may be available and are not
310 intended to be prerequisite to or exclusive of any other remedies.

311 17. **Non-Interruption of Performance**-- The filing of a complaint, or the investigation
312 or hearing or recommended order concerning a complaint under this Policy shall
313 not hinder or affect the award of, performance of, or payment on a contract prior to
314 a final administrative order that establishes a violation.

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

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

318 i. Mandatory terms.-- “Must” and “shall” are each mandatory terms used to
319 express a requirement or to impose a duty.

320 ii. Prohibitory terms.-- “Must not”, “may not”, and “no . . . may” are each
321 mandatory negative terms used to establish a prohibition.

322 iii. Permissive terms.-- “May” is permissive.

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

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

330 c. **Time Computations**

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

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

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

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

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

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

346 A. In determining the latest day for performing an act that is required by
347 this Policy to be performed a prescribed number of days before a
348 certain day, act, or event, all days preceding that day, including
349 intervening Saturdays, Sundays, and legal holidays observed by the
350 School District's administrative center, are counted in the number of
351 days so prescribed.

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

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

359 STATUTORY AUTHORITY: Fla. Stat. §§ 1001.41(2); 1001.42(22); 1001.43(2), (6)

360 LAWS IMPLEMENTED: Fla. Stat. §§ 1001.41(1), (3); 1001.42(10)(i); 1001.43(2)

361 HISTORY: 05/31/2006; ___/___/2009

Legal Signoff:

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

Attorney

Date