

Florida Association of District School Superintendents

Ethics Training Manual

September 2017

Training Description:

This training will provide background and information regarding Florida's ethics laws sufficient to satisfy the requirements pursuant to Section 112.3142, Florida Statutes. This training provides 4 hours of ethics training that addresses Article II, Section 8 of the Florida Constitution, the Code of Ethics for Public Officers and Employees, and the Government-in-the-Sunshine provisions in Chapters 119 and 286 relating to public records laws and public meeting laws.

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Ethics Training

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Ethics Training

Disclaimer

Nothing in this document, training materials, or presentation is designed to render a specific legal opinion or other professional opinion. Due to the rapidly changing nature of the law, information contained in this training program may become outdated. The analysis of any ethics issue is fact based, and therefore a proper legal opinion may only be rendered after careful analysis of specific factual circumstances. As a result, any individual using this document and training materials as a reference should always research original sources of authority and update information to ensure accuracy when dealing with a specific problem or issue, or consult legal counsel to render a specific opinion as to a specific issue. In addition, applicable rules and opinions of the Florida Commission on Ethics and School Board Policies should be reviewed. In no event will the authors or presenters be liable as a result of the use of these materials or participation in the training. This document and training materials are not exhaustive of all issues or cases that may impact an ethics issue.

Why Are We Here Today?

- ◆ It's Constitutional – [Article II, Section 8, Florida Constitution](#)
- ◆ The Legislature Intends it – [Section 112.311, Florida Statutes](#)
- ◆ The Legislature Established Standards of Conduct for Public Officers – [Section 112.313, Florida Statutes](#)

Ethics Training Requirement

- ◆ The Statute Requires It - [Section 112.3412, Florida Statutes](#)
- ◆ The Administrative Rule Explains It – [Rule 34-7.025, Florida Administrative Code](#)
- ◆ What If You Are An Outgoing Elected Officer? - [CEO 15-05 - June 10, 2015](#)

Public Records

Why do I care about public records?

- ◆ It's a "right"no, seriously.
 - Maybe not in some places but in Florida, definitely.
 - Florida Constitution – Article I, “Declaration of Rights”
- ◆ And it's "the law."
 - Florida Statutes, Chapter 119

What is a public record?

- ◆ If you receive it or you create it while doing your job...it's a public record.
 - Includes papers and electronic information (“data”).
 - Includes drafts.
 - If you share it.
 - Includes personal notes.
 - When you keep ‘em....just in case...
 - If it's about work, doesn't matter how or where you send or receive it.
 - Facebook, Twitter, Email, Text...still a public record.
 - Receive in your home mailbox or on your personal phone...still a public record.

What do I have to do with public records?

- ◆ Think before you shred!
 - You can only destroy them when the State says you can. Check your school district's written Records Retention Schedule.
- ◆ You can't hide public records in someone else's files.
 - Even contractors can have public records.
- ◆ They can either look through your files or ask for copies...their choice.
 - Unless the law says *specifically* you don't have to...
 - Either “exempt” or “confidential”
 - And don't assume you know...
 - Social Security Number exempt
 - Driver's License Number **NOT** exempt

What happens if I don't follow the law?

- ◆ You can get in trouble.
 - Criminal
 - Civil
 - Employment
 - Your oath and/or employment agreements require you to uphold the constitution and the laws of the State of Florida.

Public Records Request

“DO’s” AND “DON’T’s”

For Front-Line Employees When Faced With An In-Person Public Records Request

DO	DON'T
Acknowledge that a public records request has been made	Don't make any statement indicating that the request will be granted or denied.
Inform the Requester that you are not the records custodian.	Don't state or suggest that you are the custodian of records.
Identify the records custodian and provide his/her contact information	Don't insist that the Requester identify his/herself.
Ask for a clear description of the records the Requester seeks. Write down the description.	Don't insist that the Requester make their request in writing.
Ask how the Requester would like to be contacted regarding his/her request.	Don't ask why the Requester wants the records.
Transmit your notes regarding the request to the designated records custodian.	Don't offer any information regarding the existence or nature of the records.
Remain calm and polite.	Don't panic! Don't allow yourself to be bullied.

Public Records Requests (“PRRs”) – Reminders

1. **We cannot ask who is making the request.**
 - ◆ Don’t ask for ID or name
 - ◆ Persons only coming to the front desk of a site to make a PRR, and not to visit the site, do not need to show ID or be run through background screening
 - ◆ Can be anonymous
2. **We cannot ask why they are making the request.**
3. **We cannot require that the request be made in writing.**
 - ◆ Can be oral
4. **We cannot require that the request be made in person.**
 - ◆ Can be made in person, by phone, by email, by fax, etc.
5. **We cannot require that the request be made to a certain office.**
 - ◆ Each site must legally receive PRRs, even though other District offices may assist the site with the response
6. **We must provide the records in a reasonable amount of time.**
 - ◆ Amount of time will vary depending upon the exact request – for example, a PRR for the School Improvement Plan (SIP) could be handled that day, if not while the person waits
7. **We should charge 15 cents per page for any hard copies requested and made.**
 - ◆ Can waive this cost for very short documents
8. **We should charge staff time if the request takes more than 15 minutes to complete.**
 - ◆ Actual hourly rate, including fringe, of the lowest paid employee who can do the work
9. **We should direct any person to stop audio and/or video recording.**
 - ◆ No right to record on school grounds, except possibly Individualized Education Plan (IEP/504) meetings and School Advisory Council (SAC) meetings
10. **Call Legal Dept. at _____ for assistance.**

Public Records – How to React When You Get an “In-Person” Public Records Request (for All “Front Line” Personnel)

Under Florida’s broad Public Records Act (“the PRA”), any person can request access to or copies of public records in the custody of a school district (“the District”), as well as other state or local government agencies and contractors either acting on behalf of or having custody of government records. Most such requests will be submitted in writing. It is strongly recommended that every District have one person who serves as the designated records custodian (“the Designated Custodian”) for the District, regardless of who has physical custody of materials. When a written PRA request is received, it should be transmitted to the Designated Custodian for processing and coordination with those District employees who may have physical custody of the materials requested.

On occasion, however, someone will visit a District office or facility and make a public records request in person.

The individual making such request (“the Requester”) will sometimes ask to immediately inspect and/or photograph documents or other materials, frequently materials that are physically maintained at the same location where the request is being made. Alternatively, the Requester may ask that materials be emailed to him or her. The inference – whether intentional or not – is that the employee to whom the request is made (“the Employee”) has a legal obligation to allow such access or photography or even to email materials to the Requester.

In virtually every instance, no such obligation exists. In most instances, the in-person request will not be made directly to the Designated Custodian but, instead, will be made to a district employee whose workplace is easily accessible to a member of the public (“Employee”). The Employee may also be selected by the Requester because the Requester believes that the Employees work station is in close proximity to the records being requested. For example, a receptionist might be asked for a copy of the visitors’ log or an administrative assistant might be asked for the calendar of a superintendent or District administrator. In those instances, the Employee must clearly state that he or she is not the records custodian.

It is equally important that the Employee not inadvertently make statements suggesting that the District will not comply with the PRA.

The tips below are intended to provide guidance to those Employees who are not a Designated Custodian, but to whom such in-person requests are frequently directed. The suggested responses in quotes below are provided to illustrate that the statements made to a Requester should be simple and straightforward, but should not imply either that the PRA request is being denied or how and when the requested materials will be made available. If the Requester presses for an answer on those issues, the Employee should consistently reply that the Designated Custodian will respond to the request.

#1 Don’t panic.

Most people making public records requests have a legitimate reason for wanting to see or obtain copies of specific materials. However, some Requesters may simply be attempting to test the district’s compliance with the PRA or even to harass the District. Nonetheless, such Requesters

are entitled to access to public records to the same extent as are those with a real need for the materials sought.

While the PRA is very broad, access to all District documents and other materials is not completely unrestricted. Some materials are not public record. Some fall under one or more of the numerous exceptions to the requirement that records be accessible to the public. Even when material is a public record and is not subject to an exemption, the nature of the request being made often requires the Requester to reimburse certain costs incurred by the District and/or requires that the Designated Custodian make special arrangements for providing access to the materials.

In short, each public records request must be carefully considered so that the District response fully complies with applicable law. This is the role of the Designated Custodian, sometimes in consultation with the District's attorney or other District personnel who are knowledgeable about the materials and the PRA.

#2 Tell the Requester that you are not the records custodian.

I am not the custodian of any of the public records of the District. [Name of Designated Custodian] has been designated as the custodian of all public records of the District.

The PRA imposes responsibilities on the custodian of public records, including the responsibility to provide access to or copies of public records (unless there is a specific statutory exemption). However, not every employee of the District is a custodian. In fact, each District should designate a specific person to act as the Designated Custodian, with all public records requests – whether received in writing or orally – transmitted to that person for processing.

The Employee who receives an oral public records request is required to identify the Designated Custodian. This need not be an individual but could, instead, be a specific position or office.

Even documents or materials that are in close physical proximity to the Employee's work station are not officially in his/her custody. For example, a visitor's sign-in log may be positioned on a ledge on the receptionist desk. Nonetheless, the receptionist is not the custodian of the sign-in log.

#3 Acknowledge receipt of the public records request, but offer no specific indication of whether how or when the records will be made available.

I understand that you are making a public records request. The District's records custodian will respond to your request.

The PRA requires prompt acknowledgement that a public records request has been received. This acknowledgement need not be in writing, although the District is advised to provide written acknowledgement within a few days of receiving the request. The Employee need merely state his/her understanding that a public records request is being made.

The District has an obligation to permit access to or copies of public records as follows: 1) at a reasonable time; 2) under reasonable conditions; and 3) under the supervision of the records

custodian or the custodian's designee. Depending on the nature of the materials requested, the time and conditions for granting the request that are reasonable and the need for supervision will vary greatly. The Employee should offer no opinion regarding any of these factors. Instead, the Designated Custodian – or other District personnel with whom the custodian consults – will respond to the Requester regarding the time and conditions for providing access.

#4 Get a written description of the materials are being requested.

Please provide a written description of the materials you are requesting. If you prefer not to make your request in writing, please state your request again, so that I can write it down to make sure the public records custodian receives an accurate description of your request. [Then read your description of the request back to the Requester].

A person making a public records request need not submit the request in writing. In order to properly respond to the request, however, the Designated Custodian needs to know how the Requester characterizes the materials sought. There may be instances when the description is vague or extremely broad. There may even be occasions when the Employee is relatively certain that no such materials exist. However, the Employee should refrain from offering that information or giving any response regarding the nature of the materials requested. Instead, the Employee should simply make certain that he/she accurately records what the Requester has asked for. The Designated Custodian or a person appointed by the Designated Custodian should be the one to follow-up with the Requester further regarding the substance and scope of the request.

#5 Ask how the Requester would like to be contacted with the District's response to the request.

You can contact [the Designated Custodian] at [telephone number or email address] to inquire about the status of your request or, if you prefer, you can leave your contact information and he/she will contact you.

A Requester is not required to identify his/herself, nor is the Requester required to provide any contact information. If a Requester declines to give his/her name or any contact information, the Employee should provide the telephone number, email address, or some other method for the Requester to contact the Designated Custodian for follow-up on the status of the request.

#6 Don't offer any information regarding the materials sought or the manner in which the District will respond to the request.

SILENCE

or

I'm not the records custodian and, therefore, can't provide you with any information regarding the [existence or nature or volume or format, etc.] of the materials you are seeking.

The manner in which the District responds to a public records request varies depending upon what is being requested and the manner in which the Requester seeks access. Because there can

be so much variation in the appropriate response that must be given, that analysis and decision must be made by the Designated Custodian, sometimes in consultation with legal counsel or others employed by the District.

#7 Don't be bullied into submission.

I have noted your public records request in writing and will forward it to the records custodian. Any further communication regarding your request will need to be directed to [the Designated Custodian].

Most Requesters will be satisfied with the responses suggested above. However, some Requesters may either insinuate or even insist that the Employee is required to allow the Requester to immediately inspect or even photograph the materials being requested. While the District may ultimately provide such access, the Employee should not make that decision. Nor should the Employee get into a debate with the Requester or feel compelled to respond to questions after informing the Requester that the Designated Custodian will provide the responses. Instead, merely react in a manner consistent with the suggestions above.

Promptly forward your notes regarding the request to the Designated Custodian.

Elections and Financial Disclosure

Elections

- ◆ Resign to Run – [Section 99.012, Florida Statutes](#)- Restrictions on individuals qualifying for public office.

Financial Disclosure – Applicable Statutes

- ◆ Full and public disclosure of financial interests - [Section 112.3144, Florida Statutes](#)
- ◆ Possible Fines and Penalties - [Section 112.3145, Florida Statutes](#)- Disclosure of financial interests and clients represented before agencies.

Overview of the Disclosure Forms

- ◆ Commission on Ethics – Comprehensive Financial Disclosure [Chart](#)
- ◆ [Form 1 - 2016](#) – State of Financial Interests
- ◆ [Form 6](#) – Full and Public Disclosure of Financial Interests

Seven Things to Know About Financial Disclosure

- ◆ The due date for Form 1 and Form 6 is July 1, but here is a grace period effective until September 1, after which automatic fines of \$25 per day begin to accrue.
- ◆ The original, signed disclosure form must be filed – scanned or faxed versions are not acceptable.
- ◆ Form 1 filers must choose either “comparative (percentage) thresholds” or “dollar value thresholds” to calculate their reportable interests.
- ◆ If a CPA or attorney prepares and signs the disclosure form, the filer may be protected from a violation if a complaint is filed and it is determined that the CPA or attorney failed to accurately transcribe information provided by the filer.
- ◆ Unlike newly-appointed or newly-employed Form 1 filers, there is no requirement that newly appointed Form 6 filers file within 30 days of appointment.
- ◆ If you file a Form 1 or Form 6 and then file an amended form (Form 1X or Form 6X) prior to September 1, the amended form is considered the original filing even if a complaint is filed.
- ◆ If you receive an automatic fine for not timely filing your Form 1 or Form 6, the Commission may take action to collect the fine during the 20 years after it becomes final.

Gifts – Selected Statutes/Forms

Reporting and Prohibiting the Receipt of Certain Gifts

- ◆ [Section 112.3148, Florida Statutes](#) - Reporting and prohibited receipt of gifts by individuals filing full or limited public disclosure of financial interests and by procurement employees.

Solicitation and Disclosure of Honoraria

- ◆ [Section 112.3149, Florida Statutes](#) - Solicitation and disclosure of honoraria.—

Prohibition on Gifts Involving Political Committees

- ◆ [Section 112.31485, Florida Statutes](#) - Prohibition on gifts involving political committees.—

Further Limitations for School Board Members

- ◆ [Section 1001.421, Florida Statutes](#) - Gifts

Possible Fines and Penalties

- ◆ [Section 112.317, Florida Statutes](#) - Penalties
- ◆ [Section 112.3173, Florida Statutes](#) – Possible Forfeiture of Retirement Benefits

Disclosure Forms

- ◆ Statutory Reference: [Section 112.3147, Florida Statutes](#) - Forms.
- ◆ All Forms can be found on the Commission on Ethics website at www.ethics.state.fl.us
- ◆ [Form 9](#) – Quarterly Gift Disclosure (Gifts over \$100)
- ◆ [Form 10](#) Annual Disclosure of Gifts from Governmental Entities and Direct Support Organizations and Honorarium Event Related Expenses
- ◆ [Form 30](#) – Donor’s Quarterly Gift Disclosure (for Lobbyists)

Commission on Ethics - Regulations

- ◆ Chapter 34-13, Florida Administrative Code – Gifts and Honoraria - www.flrules.org

Selected Gift Law Rules for Public School Employees & Board Members

Short Summary of Rules

1. *All* – Cannot promise your action in exchange for a gift¹ from anyone of any value.
2. *All* – Cannot accept a gift from anyone of any value when you know or, with the exercise of reasonable care, should know that it is given to influence your action, even if it does not, in fact, influence you.
3. *All* – Cannot accept a gift over \$100 from a vendor² or a lobbyist³ (“V/L”) (this is a different law than 1. as explained below).
4. *RIPEs*⁴ – Cannot solicit a gift of any value from a V/L.
5. *RIPEs* – Cannot accept or solicit a gift of any value from a political committee⁵ (“PC”).
6. *RIPEs* – Must file quarterly gift reports for gifts over \$100 from non-V/L/PC donors⁶ and annual gift reports for gifts over \$100 from other specific donors.
7. *RIPEs* – Cannot solicit or accept an honorarium⁷ under certain circumstances.
8. *School board members only* – Cannot accept or solicit a gift over \$50 from a vendor or a person/entity seeking to become a vendor.

1 “Gift” is generally defined to include anything given or sold to you for which equal consideration is not given in return and includes but is not limited to food, tickets, payment of dues, use of real estate, travel expenses, and clothing; it does *not* include items such as gifts from relatives, honoraria and expenses relating to honorarium events, and plaques given for public service. See s. 112.312(12), F.S. Can “pay down” gifts to a desired threshold level, such as paying \$40 for a \$140 ticket, thus making the “gift” a value of \$100. “Gifts” must be of a personal benefit to you, so a district vendor you see at a conference that gives you five iPads for classroom use is not a violation of the law – it is not your gift, it is the district’s.

2 “Vendor” is any business entity doing business directly with an agency, such as renting, leasing, or selling any realty, goods, or services. See s. 112.3148(2)(f), F.S. There is no definition of “vendor” in s. 1001.421, F.S. (see #8.), but the cited definition likely applies there, too.

3 “Lobbyist” is any person working individually or for an organization who, for compensation, seeks or sought during the 12 months prior to the gift to (1) influence the governmental decision making of the official or the agency itself, or (2) encourage the passage, defeat, or modification of any proposal or recommendation by the official or the agency itself. See s. 112.3148(2)(b), F.S.

4 “RIPEs” are “reporting individuals” and “procurement employees,” as further explained in 4. below.

5 “Political committee” is generally a person or group that collects and/or expends more than \$500 per year to support or oppose a political candidate or electoral question, but specifically excludes national political parties, the state and county executive committees of such political parties, and affiliated party committees. See ss. 112.3148(4) and 106.011(16), F.S.

6 V/L/PCs are excluded because you would not file a report in this instance since you cannot even take gifts in this amount from them.

7 “Honorarium” is a payment of money or anything of value, directly or indirectly, to a RIPE (see 4. below), or to any person on their behalf, as consideration for a speech, presentation, writing, or similar task, but does not include actual expenses for attending the event where it is presented.

Detailed Discussion of Each Rule

1. All – Gifts from Anyone of Any Value – Bad Motive – Section 112.313(2), F.S.

Under this law, no public employee or board member may *solicit* or *accept* a gift *from anyone of any value* based upon any understanding that such was given to influence the judgment or action of the recipient.

This law covers the true corruption that occurs when a person actually colludes with a donor to accept a gift with both parties understanding that the gift will influence action. There is no dollar limit to the gift, so a violation of the law would occur if you accepted a free sandwich in exchange for a certain action on an issue. In addition, there is no restriction on the identity of the donor, such as from a vendor or lobbyist, which is the case in one law below, so a violation would occur if you sell your influence to anyone, not just to a vendor or a lobbyist. Lastly, the gift need not be received by you personally, so a violation would occur, for example, if you promise your influence in exchange for a donation to your spouse's political campaign or a grant award to your neighbor's nonprofit organization.

2. All – Gifts from Anyone of Any Value – “Knew or Should Have Known” – Section 112.313(4), F.S.

Under this law, no public employee or board member, nor their spouse or minor child, may *solicit* or *accept* a gift *from anyone of any value* when the person knows or, with the exercise of reasonable care, should know that the gift is given to influence an action.

This law covers the scenario when a public official does not necessarily have a bad motive, but took a gift that a reasonable person would know was given in order to influence a vote or action. For example, in prior cases, it was held that officials “should have known” that the following gifts were given to influence their vote or action: an all-expenses paid hunting trip to Key West, free personal cable television service from a city's cable franchisee, and free memberships from a country club leasing its facilities from a city; however, the following scenarios were held not to violate this provision: a fair market value residential rental to a public official, and a public official receiving donations for his ill son's care where the donations were anonymous (it was not reasonable for the official to assume it was given to influence judgment when he did not even know who gave it and, thus, would be hard pressed to know who to favor in his actions).

Note that here, as in 1. above, there is no dollar limit or restriction on who makes the gift. So, you should always ask yourself: “Would a reasonable person think that the gift is given in order to influence me in my official capacity?” If the answer is yes, then you should not take the gift. As a practical matter, gifts from lobbyists and vendors or potential vendors are more reasonably likely to be given to influence you than gifts from someone with no stake in your action; and, large gifts are more reasonably likely to be given to influence you than small gifts. These common sense guidelines are evident in agency and court rulings: reported violations of this law usually involve larger gifts from lobbyist or vendors.

3. All – Acceptance of Gifts from V/Ls – Cannot exceed \$100 – Section 112.3148(4), F.S.

Under this law, no public employee or board member, nor any other person on their behalf, may *accept* gifts in excess of \$100 in value from any vendor or lobbyist. If the gift is from someone not a V/L, then the value could exceed \$100, but recall that under 1. and 2. above, the person cannot accept any gift from anyone of *any* value if it was a true bribe or you knew or should have known it was given to influence your vote or action. Detailed rules exist regarding the calculation of the \$100 threshold, such as separate meals re-starting a new \$100 calculation, and tickets in a skybox including both the price of admission to the game and the proportionate cost of the annual skybox fee. Specific questions about valuation should be directed to your attorney and/or the Commission on Ethics (www.ethics.state.fl.us). See also Rules 34-13.500 and 13-510, F.A.C., for detailed gift valuation rules.

4. RIPLEs – No Solicitation of Gifts of Any Value from V/Ls – Section 112.3148(3), F.S.

Certain laws apply only to “reporting individuals” and “procurement employees,” known collectively as RIPLEs. See 4.-7. herein. The superintendent, board members, and certain other employees are “reporting individuals” since they must file a financial disclosure form with the state, either Form 1 (Statement of Financial Interests) or Form 6 (Full and Public Disclosure of Financial Interests). “Procurement employees” are only those state-level employees who have certain purchasing powers. Thus, local school districts do not have “procurement employees” as used in these laws (4.-7. herein), *but* those school district employees who possess the authority to make purchases >\$20k are “reporting individuals.” See s. 112.3145(1)(a)3., F.S.

Under this law, RIPLEs cannot *solicit* any gift of *any value* from any vendor or lobbyist. Note that this law only applies to soliciting, or asking for, gifts. Also note that this prohibition precludes one RIPLE from soliciting a gift for the benefit of other RIPLEs, but does not preclude a non-RIPLE from making a solicitation. For example, the law would not prohibit a FASA clerk (as opposed to an officer, who may be a RIPLE) from soliciting lobbyists to pay for the cost of principals’ meals at an FASA conference. Whether the principals can *accept* the meals is a question to be addressed under 3. above, but meals included as part of a conference are not gifts if they are paid for by the registration fee; if the meal was not part of the registration fee, then the rules under 3. above would need to be applied to the acceptance of the meal. But, for purposes of this law, the principals did not solicit the food in this hypothetical, FASA did.

5. RIPLEs – No Acceptance or Solicitation of Gifts of Any Value from PCs – Section 112.31485, F.S.

Under this law, neither RIPLEs, nor their immediate family⁸, can *solicit* or *accept* any gift of *any value* from a PC. Just for this law, the term “gift” is further defined to mean those items of value that are “not primarily related to contributions, expenditures, or other political activities authorized pursuant to Chapter 106,” which is the chapter of Florida Statutes relating to campaign finance; this amended definition thus allows PCs to make campaign contributions otherwise allowed by law, and such contributions will not be considered unlawful gifts.

⁸ “Immediate family” is limited to your parent, spouse, child, or sibling. See s. 112.31485(1)(b), F.S.

6. RIPES – Reporting Requirements – \$100 Trigger

RIPES must file quarterly gift disclosure reports with the Commission on Ethics listing all gifts valued in excess of \$100, which obviously would be from someone other than a V/L or a PC since RIPES cannot even accept gifts from V/Ls over \$100 or PCs of any value. Gifts from relatives and some other technical gifts not at issue here are exempted from this reporting requirement. See s. 112.3148(8), F.S. and Form 9.

In addition, RIPES must file annual gift disclosure reports with the Commission on Ethics listing all gifts valued in excess of \$100 received from a governmental entity or a direct support organization specifically authorized by law to support a governmental entity. See s. 112.3148(6)(d), F.S. and Form 10.

For your information, certain donors also have a reporting requirement and it is triggered at a lower dollar figure than a RIPE's requirement. V/Ls must file quarterly gift disclosure reports with the Commission on Ethics listing all gifts to RIPES valued over \$25, but not over \$100. This restriction stops at \$100 because another law prohibits V/Ls from even giving a gift of over \$100 to a RIPE, which corresponds to your prohibition against taking it. See s. 112.3148(5)(b), F.S.

In addition, a corresponding annual reporting requirement exists for donors of more than \$100 who are a governmental entity or a direct support organization specifically authorized by law to support a governmental entity. Again, this corresponds to your prohibition against taking gifts over \$100 from such organizations. See s. 112.3148(6)(c), F.S.

7. RIPES – Honoraria – Section 112.3149, F.S.

Honoraria are excluded from the definition of “gift” such that the rules above do not apply to honoraria. Thus, a separate statute was needed to define the circumstances under which honoraria could or could not be solicited or accepted. As noted in footnote 6, “honorarium” is defined as a payment of money or anything of value, directly or indirectly, to a RIPE, or to any person on their behalf, as consideration for a speech, writing, etc., but does *not* include actual expenses for attending the event where it is presented.

Under this law, RIPES cannot *solicit* an honorarium *from anyone of any value if* the subject of the speech, presentation, etc. relates to the RIPE's public office or duties. Further, a RIPE cannot *accept* an honorarium from a V/L/PC of *any value*; such entities are also prohibited from providing such honoraria. However, as noted, payment for actual expenses for attending the event where the speech or presentation is given is not an “honorarium” and not prohibited by this law, even if paid by a V/L/PC, but it must be reported by the RIPE if paid by a V/L/PC (no minimum dollar threshold for this reporting requirement). But, payment of actual expenses may be prohibited by other ethics rules, such as 1. or 2. Above, since these expenses are not “honoraria” and thus could be prohibited “gifts.”

8. School board members only – Gifts Over \$50 from Vendors/Potential Vendors to school board members – Section 1001.421, F.S.

This statute applies only to public school board members. In 2011, the Legislature passed this law located in the School Code specifically relating to gifts to school board members. It further restricts their pre-2011 obligation as a RIPE to not solicit or accept gifts from vendors and lobbyists. In short, it prohibits board members and their relatives⁹ from, directly or indirectly, *soliciting a gift from anyone of any value* or *accepting* any gift in excess of \$50 from any person or entity that is either (1) doing business with the district or (2) seeking to do business with the district. See s. 1001.421, F.S. There are no reporting requirements under this law because a school board member's existing reporting obligation as a RIPE discussed in 6. above only begins with gifts that exceed \$100 (which obviously cannot come from vendors, but could still come from certain others).

⁹ Relative" includes your father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, grandparent, great grandparent, grandchild, great grandchild, step grandparent, step great grandparent, step grandchild, step great grandchild, fiancée, someone who otherwise holds himself or herself out as or is generally known as the person whom you intend to marry or with whom you intend to form a household, or any other natural person having the same legal residence as you. See s. 112.312(21), F.S.

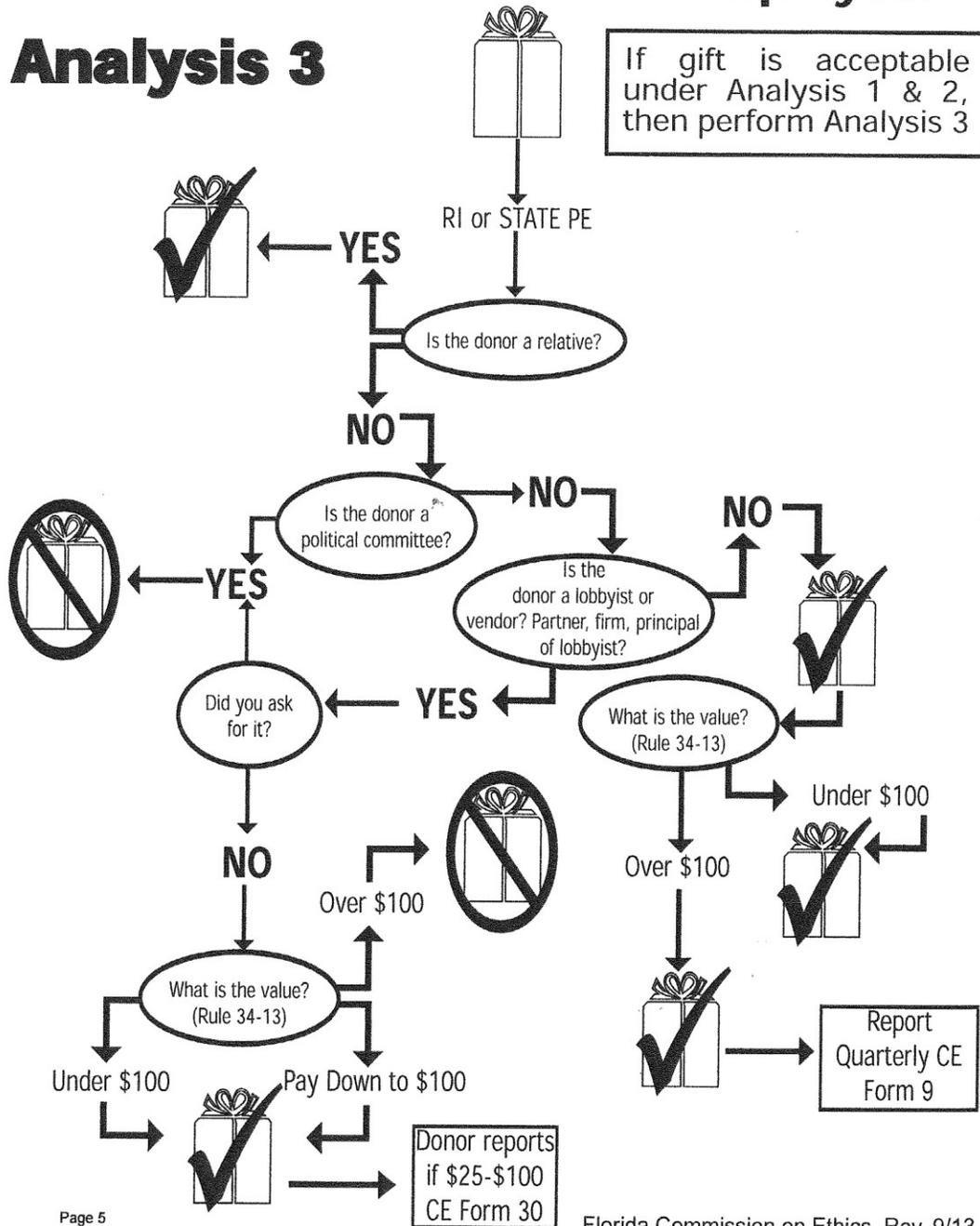
Five Things to Know about Gifts

- ◆ Always check first to see whether the gift is prohibited by s. 112.312(2) or (4), or by the expenditure ban in s. 112.3125 or the ban on gifts from political committees in s. 112.31485. Only if it is not prohibited under any of those laws do you proceed to an analysis under the gift law.
- ◆ A gift is anything you don't pay for within 90 days. This includes food, beverages, prizes, and overnight stays at someone's house.
- ◆ If a gift is prohibited, reporting it won't "cure" the violation. Reporting Individuals or Procurement Employees (RIPEs) are *prohibited* from accepting gifts worth more than \$100 from lobbyists or their firms, partners, employers, or principals, or from vendors!
- ◆ If a gift is not prohibited, and it is worth more than \$100, a RIPE must report it on a Form 9 no later than the end of the quarter following the quarter in which he or she received the gift.
- ◆ You can always accept a gift, in any amount, from a relative, and you don't have to report it.

Can I take it?

I'm a Reporting Individual or State Procurement Employee.

Analysis 3



Procurement

How to Buy What You Need Without Ending Up in Jail

I. Procurement Basics/Legal Authority

A. Underlying statutes:

1. Ch. [255](#), Florida Statutes - Generally applicable statutes relating to public works
2. § [1001.41](#), Florida Statutes - Authority to contract.
3. § [1001.42\(12\)](#), Florida Statutes
4. [Chapter 1013, Part III, C.](#), Florida Statutes - Contracts for educational facilities.
5. § [287.055](#), Florida Statutes - Certain professional services.

B. Underlying rules:

1. [Fla. Admin. Code R. 61-1.013](#) (SBE rule/pooled purchasing) (§ [1010.04](#), Florida Statutes)
2. [Fla. Admin. Code R. 60A-1](#) (DMS rules) (required by § [1001.42\(12\)\(j\)](#), Florida Statutes)
3. School board rules

II. Procurement Options

A. Basic formats

1. ITB – Invitation to Bid
2. RFP – Request for Proposal
3. ITN – Invitation to Negotiate
4. CCNA – Consultants Competitive Negotiation Act

B. Exceptional purchases/competitive solicitation not required

1. Certain non-CCNA professional services. [Fla. Admin. Code R. 6A-1.012\(11\)\(a\)](#).
2. Educational services and copyrighted materials. [Fla. Admin. Code R. 6A-1.012\(11\)\(b\)](#).
3. Less than 2 competitive bids received.
4. Single source
5. Emergency purchases
6. State or federal law prescribing with whom district must contract
7. Utilities and other government franchised services
8. Insurance, risk management, third party administrators (direct negotiation option)

C. Alternative procurement vehicles

1. Pooled purchasing
2. State term contracts
3. Cooperative purchasing with other districts
4. Other cooperative purchasing

D. Ethical screen.

III. Procurement protests

- A. Decision must be posted electronically. Must include “point of entry” language
- B. Process is generally same as for state agencies: § [120.57\(3\)](#), Florida Statutes.
 - 1. Notice of protest filed within 72 business hours. Procurement specifications generally identify where the notice should be filed.
 - 2. Formal written protest filed within 10 calendar days after notice of protest. If 10th day falls on a weekend or holiday, the filing deadline falls on the next business day.
 - 3. Opportunity for informal settlement must be provided within 7 business days after formal protest filed.
 - 4. If not settled and but petition raises no material factual issues, an informal proceeding (§ [12.57\(2\)](#), Florida Statutes) can be conducted.
 - 5. If material factual issues raised, protest must be transmitted to DOAH for formal hearing (§ [120.57\(1\)](#), Florida Statutes).
- C. If timely protest not initiated, right to protest is waived.
 - 1. Challenges to specifications
 - 2. Challenges to interim decisions (e.g. shortlisting).
- D. Protest bond.
 - 1. Protest arising from procurements relating to public buildings or educational facilities
 - a. \$ 25,000 or 2% of the lowest bid, whichever is greater, for projects valued at over \$500,000
 - b. 5% of the lowest bid for other projects.
 - 2. Other protests: not clear that protest bond is authorized.
- E. Prohibition on ex parte communication. § [120.66](#), Florida Statutes.

IV. Other Procurement Related Ethics

- A. Conflicts of Interest: Current Business Relationships
 - 1. Prohibition on contracts with school board members, superintendent, or business organization in which board member or superintendent has any financial interest. § [1001.42\(12\)\(i\)](#), Florida Statutes.
 - 2. Prohibition on contracts with the spouse or child of a board member, superintendent, or school district purchasing agent—or any business entity in which such spouse or child is an officer or has more than a 5% direct or indirect ownership interest. § [112.313\(3\)](#), Florida Statutes.
 - a. Exception 1: When the contract was awarded through competitive sealed bidding to the lowest or best bidder and:
 - 1) the official/purchasing agent had no role in determining the bid award; and
 - 2) the spouse or child did not attempt to use the official/purchasing agent’s influence to obtain the award.an emergency purchase is necessary.
 - 3) the official/ filed a statement with the supervisor of elections disclosing the conflict.
 - b. Exception 2: Emergency purchases

- c. Exception 3: Sole source purchases, but full disclosure of the relationship must be provided
 - d. Exception 4: Purchases with an aggregate annual price of \$500 or less.
- B. Conflict of Interest: Post-employment.
- 1. School board members and elected superintendents: 2-year bar on lobbying.
 - 2. School boards have option of adopting 2-year post-employment bar on paid representation by appointed officials and employees (except collective bargaining)
- C. Voting conflicts:
- 1. School board members may not vote on, or attempt to influence the vote on, any matter that will “inure to the benefit” of themselves, their parent, child, spouse, sibling, their spouse’s parent, their child’s spouse or any organization that retains the school board member
 - 2. Superintendent may not attempt to influence a decision on any matter that will “inure to the benefit” of themselves, their parent, child, spouse, sibling, their spouse’s parent, or their child’s spouse
 - 3. Voting conflict must be disclosed in a written memorandum.

Conflicts of Interest and Voting Conflicts

Don't Conduct Business with Your School Board

- ◆ [Section 112.313, Florida Statutes](#) - Standards of conduct for public officers, employees of agencies, and local government attorneys.—

Disclosing Voting Conflicts

- ◆ [Section 112.3143, Florida Statutes](#) - Voting conflicts
- ◆ [Section 286.012, Florida Statutes](#) - Voting requirement at meetings of governmental bodies

Form 8B – Memorandum of Voting Conflict for County, Municipal, and other Local Public Officers

- ◆ [Form 8B](#)

Nepotism

- ◆ [Section 112.3125, Florida Statutes](#) - Restriction on employment of relatives.
- ◆ [Section 1012.23, Florida Statutes](#) - School district personnel policies.—

Dual Public Employment

- ◆ [Section 112.3125, Florida Statutes](#) - Dual public employment
- ◆ [Section 112.313, Florida Statutes](#) - Standards of conduct for public officers, employees of agencies, and local government attorneys.

Qualified Blind Trusts

- ◆ [Section 112.31425, Florida Statutes](#) - Qualified blind trusts.

Nine Things to Know about Conflict of Interest, Post- Public Service Restrictions, & Related Matters

- ◆ Abstaining from a vote and fully complying with the voting conflicts law of s. 112.3143 will not prevent, cure, or negate a conflict under s. 112.313(3) or (7).
- ◆ A public officer purchases, rents, or leases realty, goods, or services for his public agency when he does so individually or when a collegial public body of which he is a member does so.
- ◆ One acts in a private capacity to rent, lease, or sell realty, goods, or services to his public agency (or to any agency of his political subdivision if he is a local public officer or employee) when he does so individually or when he is an officer, director, proprietor, or holder of a material interest in a business that does so.
- ◆ Paid and unpaid connections can constitute a contractual relationship; as can ownership of small amounts of stock (or stock options) in large companies.
- ◆ Generally, neither a public officer nor a member of his firm can represent a client in a matter involving his own public board or agency.
- ◆ The competitive bidding exemption to certain conflicts requires true sealed competitive bidding to the lowest or best bidder; requests for proposals, invitations to negotiate, and similar procurement mechanism do not entitle one to the protections of the exemption.
- ◆ State ethics laws are not all that public officers, employees, and attorneys should review in order to steer clear of conflicts and violations. Other Florida Statutes (civil and criminal), Federal law, rules of various agencies, and local ordinances and provisions also should be examined.
- ◆ The meaning of “representation” within the context of post-public-service restrictions and other restrictions is extremely broad; it prohibits almost all contact with an agency on behalf of one’s client, company, or employer.
- ◆ Local government attorneys, especially those who are independent contractors, should read s. 112.313(6) very carefully, and tailor their contracts with government accordingly.

Ten Things to Know about Voting Conflicts

- ◆ If your board votes to do business with you – or an entity with which you’re employed even if you abstain, you will still be in violation of the conflict laws.
- ◆ If your board votes to hire, appoint, or promote your relative, even if you abstain, you still will be violating the anti-nepotism law.
- ◆ Voting conflicts arise when a measure will bring an officer or other specified person or entity “special private gain or loss.” This means *economic* benefit or harm.
- ◆ State and local officers are prohibited from voting on measures resulting in “special private gain or loss” to themselves.
- ◆ Local officers are also prohibited from voting on measures resulting in “special private gain or loss” to their principals, relatives, or business associates.
- ◆ State officers are not prohibited from voting on measures resulting in “special private gain or loss” to principals, relatives, or business associates, but must disclose their interests in such votes.
- ◆ Considerations for “special private gain or loss” include (1) the size of the class; (2) whether the gain/loss is remote or speculative; and (3) whether the vote is preliminary or procedural.
- ◆ All state officers facing a voting conflict affecting them personally must: (1) abstain; and (2) disclose the conflict by filing a Form 8A within 15 days of the vote.
- ◆ All local officers facing a voting conflict affecting them personally must: (1) abstain; (2) publicly disclose the conflict to their agency prior to the vote; and (3) file a Form 8B within 15 days of the vote.
- ◆ Additional rules apply for appointed state and local officers who wish to participate in matters which could affect themselves, their principals, employers, relatives, or business associates.

Who Can Answer My Ethics Questions?

Contact the Commission on Ethics at www.ethics.state.fl.us

C. Christopher Anderson, III, is the General Counsel and Deputy Executive Director.

If he is not available, ask for the “attorney for the day.” An attorney is assigned daily to respond to ethics issues.

The phone number is 850.488.7864

Biographies of Speakers

Martha (“Marti”) Harrell Chumbler has over thirty-five years of experience in the area of Florida government law and administrative practice. Following a 2-year judicial clerkship at the Florida Supreme Court, Marti served for four years as an attorney with the former Department of Environmental Regulation, first as the program attorney for the potable and groundwater programs and then as the air quality program attorney. She joined what is now the Carlton Fields law firm in 1984, where she continued to focus her practice on state administrative litigation, government regulation, and public procurement. Marti routinely advises government agencies and public contractors on issues relating to the applicability of and their compliance with Florida’s public records and open meetings laws. She has also provided training to the staff and officers of clients that – due to their role as either public contractors or semi-public entities – are subject to Florida’s Government in the Sunshine laws. Marti is a member of the Executive Committee of the ABA State and Local Government Law Section, is certified by the Florida Bar in the area of State and Federal Government and Administrative Practice, and currently services on the SFGAP Certification Committee. Marti has edited and authored chapters in two ABA publications: Access to Government in the Computer Age: An Examination of State Public Records Laws (ABA 2007) and Urban Agriculture: Policy, Law, Strategy, and Implementation (ABA 2015), as well as updating and revising the chapter on honoraria, royalties, and travel reimbursements in Ethical Standards in the Public Sector (ABA 2d. 2008).

Joy Cousseaux Frank has been the General Counsel and Legislative Liaison for the Florida Association of District School Superintendents since 1997. In this capacity, Ms. Frank represents public school interests before the Florida Legislature and the Department of Education. Ms. Frank has over thirty-five years of professional experience in the legislative process, including lobbying for various associations, lobbying firms and a Cabinet agency. Her knowledge of the legislative process was initially obtained by holding legislative staff positions in both the Florida House of Representatives and the Florida Senate. Ms. Frank has also served as the Legislative Affairs Director for the Florida Department of Education; Staff Director for the House Committee on Public Schools, Florida House of Representatives; Policy Coordinator, House Democrat Office, Florida House of Representatives; Staff Attorney, House Committee on Health and Rehabilitative Services, Florida House of Representatives, and Legislative Analyst, Senate Committee on Health and Rehabilitative Services, Florida Senate. Ms. Frank received her undergraduate degree in Elementary Education and law degree from the Florida State University.

David Koperski is the School Board Attorney for Pinellas County Schools. He represents the School Board in all legal matters and is general counsel to the district, providing legal advice to the School Board, Superintendent, and district administration on all matters affecting the operations of the school system. He has worked as an attorney for Pinellas County Schools since 2005. In addition to general corporate representation, Mr. Koperski has represented both school district administrations and school boards in administrative and judicial settings in

various matters involving education law. He also serves as an Adjunct Instructor with the University of South Florida St. Petersburg, teaching a course in education law in the Masters of Educational Leadership program. Mr. Koperski earned his law degree from the University of Illinois College of Law in 1994, prior to which he earned his undergraduate degree cum laude from Drake University.

Diego “Woody” Rodriguez serves as General Counsel for the Orange County School Board and resides in nearby Maitland, Florida. Woody received his B.A. in English and his J.D. from Florida State University. He is a member of the Orange County Bar Association, where he previously served as President in 2009- 10, the American Bar Association, where he served as the YLD National Diversity Director in 2003-04 and the Hispanic Bar Association of Central Florida, where he served as President in 2002. Woody is admitted to practice in all three Federal Districts in Florida and has been Board Certified in City, County, Local Government Law since 2006, has been a Certified Circuit Court mediator since 2008 and has been a Registered Parliamentarian since 2011. Prior to working with OCPS, he was employed at Marchena & Graham, P.A. serving as General Counsel to the Orange County Supervisor of Elections and as litigation counsel to the Orange County Property Appraiser. Woody began his legal career in 1995 working with the Florida Senate as a staff analyst. He is a recipient of a number of awards and recognitions including the 2002 Florida Bar’s Lynn Futch Most Productive Young Lawyer Award, the 2005 Florida Bar Young Lawyers’ Diversity Award and the Orange County Bar Association’s 2007 Lawrence Matthews Professionalism Award. Most of all Woody, enjoys attending FSU sporting events and watching his son and daughter participate in little league games and piano recitals along with his wife, Ninth Circuit Court Judge, Heather Pinder Rodriguez.

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