

# **Florida Association of District School Superintendents**

## **Ethics Training Manual**

**September 2019**

### **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 four 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 Due to the rapidly changing nature of the law, information contained in this training program may become outdated.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 112.3142, Florida Statutes.
- ◆ The Legislature Established Standards of Conduct for Public Officers – Section 112.313, Florida Statutes.

## Ethics Training Requirement

- ◆ The Statute Requires It – Section 112.3142, Florida Statutes.
- ◆ The Administrative Rule Explains It – Chapter 34-7.025, F.A.C.
- ◆ 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, send it, or 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 in the file....just in case...
    - But they are not public records when designed for own personal use in remembering certain things.
  - ***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	<b>Don't</b> make any statement indicating that the request will be granted or denied.
Inform the Requester that you are not the custodian of records.	<b>Don't</b> state or suggest that you are the custodian of records.
Identify the records custodian and provide his/her contact information	<b>Don't</b> insist that the Requester identify him/herself.
Ask for a clear description of the records the Requester seeks. Write down the description.	<b>Don't</b> insist that the Requester make their request in writing.
Ask how the Requester would like to be contacted regarding his/her request.	<b>Don't</b> ask why the Requester wants the records.
Transmit your notes regarding the request to the designated records custodian.	<b>Don't</b> offer any information regarding the existence or nature of the records.
Remain calm and polite.	<b>Don't panic!</b> <b>Don't allow yourself to be bullied.</b>

# 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. The Designated Custodian need not be an individual but could, instead, be a specific position or office.

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 (“Employee”) whose workplace is easily accessible to a member of the public. 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 Designated Custodian of records.

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. The Designated Custodian 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 Designated 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 Designated Custodian or the Designated 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 or designates – 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 Designated Custodian of public records 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. However, the (Designated Custodian) will be able to help you.*

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 List of Forms
- ◆ Filing Information - [Comprehensive Filing Information](#)
- ◆ **Form 1 - 2018** – Statement of Financial Interests
- ◆ **Form 6 - 2018** – 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 there 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. Forms are to be filed with the Supervisor of Elections in the county in which the filer permanently resides.
- ◆ 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](http://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 - Chapter 34-13, F.A.C.

# Selected Gift Law Rules for Public School Employees & Board Members

## Short Summary of Rules

1. *All* – Cannot promise your action in exchange for a gift<sup>1</sup> 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 vendor<sup>2</sup> or a lobbyist<sup>3</sup> (“V/L”) (this is a different law than 1. and 2. noted above, and is explained below).
4. *RIPES*<sup>4</sup> – 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 committee<sup>5</sup> (“PC”).
6. *RIPES* – Must file quarterly gift reports for gifts over \$100 from non-V/L/PC donors<sup>6</sup> and annual gift reports for gifts over \$100 from other specific donors.
7. *RIPES* – Cannot solicit or accept an honorarium<sup>7</sup> 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.

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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](http://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 RIPE from soliciting a gift for the benefit of other RIPLEs, but does not preclude a non-RIPE from making a solicitation. For example, the law would not prohibit a FASA clerk (as opposed to an officer, who may be a RIPE) 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 family<sup>8</sup>, 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.

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<sup>8</sup> “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 relatives<sup>9</sup> 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).

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<sup>9</sup> 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.

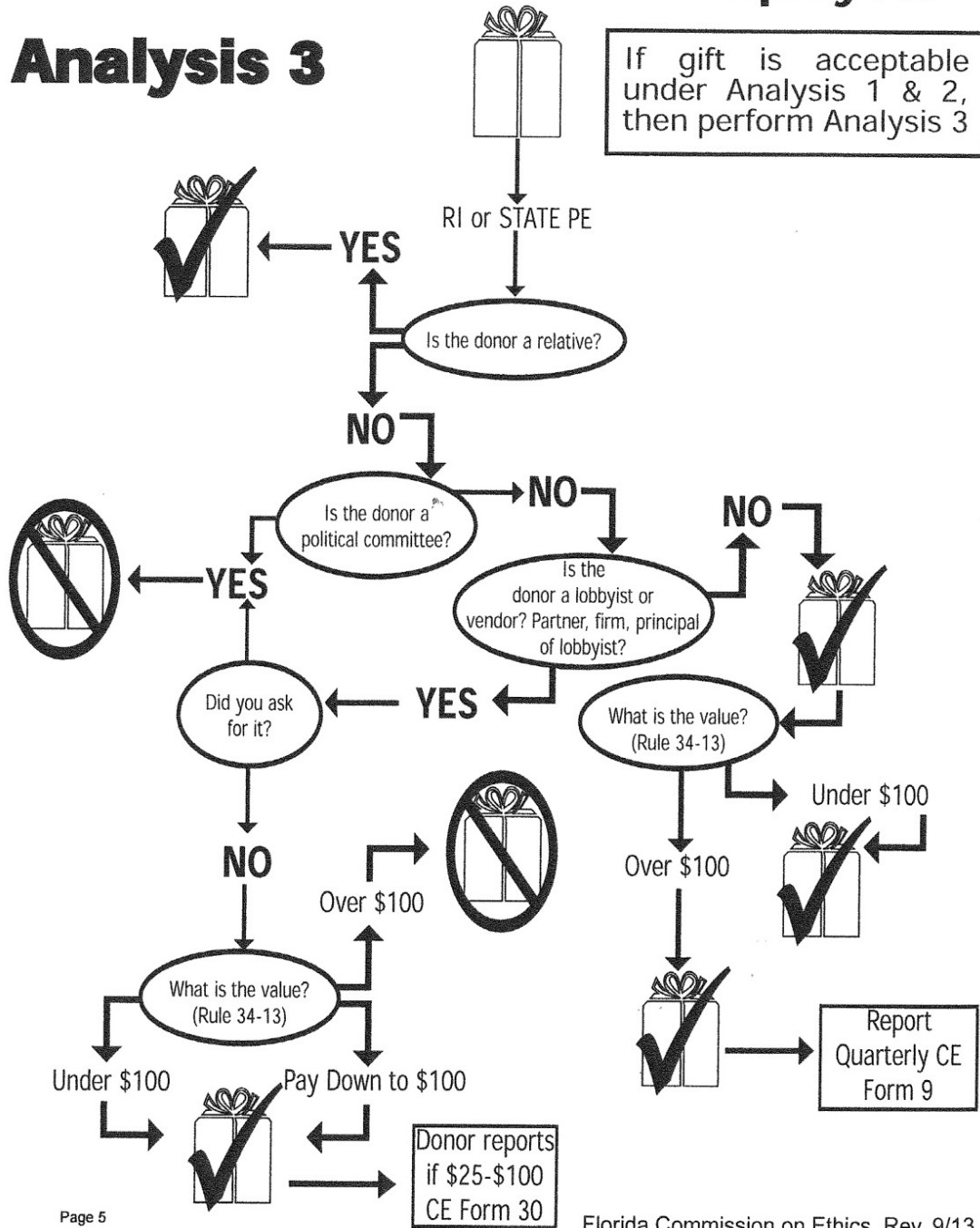
## Five Things to Know about Gifts

1. 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.
2. A gift is anything you don't pay for within 90 days. This includes food, beverages, prizes, and overnight stays at someone's house.
3. 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!
4. 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.
5. 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 – Powers and duties of district school board.
4. Chapter 1013, Part III, Subpart 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 60A-1.012(11)(a).
2. Educational services and copyrighted materials. Fla. Admin. Code R. 60A-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 10<sup>th</sup> 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 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 and appointed superintendents: 2-year bar on lobbying (extended to 6 years beginning 12/31/22 for paid lobbying).
2. School boards have option of adopting 2-year post-employment bar on paid representation by appointed officials and employees (except collective bargaining) (Appointed superintendents subject to 6-year ban beginning 12/31/22 for paid lobbying).
3. Beginning 12/31/22, no school board member or superintendent (elected or appointed) may be paid to lobby the federal government, the legislature, any state government body or agency, or any political subdivision of this state, during his or her term of office.

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. The 6-year bar imposed by Amendment 12 applies only to paid lobbying, as does the ban on lobbying other federal, state, and local governments during an official’s term.
- ◆ 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.

## Legislative Update - Ethics

**General Comments** – The Florida Legislature made several changes relating to ethics and also enhanced oversight and reporting requirements in both the 2018 and 2019 Legislative Sessions. These changes are now incorporated into the 2019 Florida Statutes. The pertinent provisions are summarized below.

### **Employment of Relatives and Advisory Opinion from the Commission on Ethics**

Nepotism provisions have been expanded to include superintendents. The new provision provides that neither the school superintendent nor school board member may appoint or employ a relative, as defined in s. 112.3135, to work under the direct supervision of that school member or school superintendent. In addition, language was added to provide that the limitations do not apply to employees appointed or employed before the election or appointment of a school board member or district school superintendent. Finally, the Commission on Ethics is required to investigate any alleged violations. (s. 1012.23, F.S.)

A relative is defined as: an individual who is related to the public official as 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, or half-sister.

An advisory opinion was requested from the Commission on Ethics regarding the implementation of these new provisions. The Commission found that the new language applies to school superintendents only in situations where they appoint or employ a relative (as defined above) to work under their direct supervision, not in situations where they make recommendations to the district school board for the board to appoint or employ their relative.

In addition, the superintendent will not trigger the statute if he or she recommends the employment of a relative of a district school board member.

The provision will not be triggered if a school superintendent proposes a salary increase or bonus for a teacher or school employee who happens to be a relative. The language is strictly interpreted and only applies to appointment or employment.

Finally, regarding the “grandfather provision,” the high likelihood that no particular superintendent will be faced with the potential “grandfathering” situation, the Commission declined to opine on this point.

### **Lobbying Restrictions**

Lobbying limitations are expanded to include appointed superintendents in the list of officials that may not personally represent another person or entity for compensation before the government body or agency of which the person was an officer for a 2 year period after vacating that office. (s. 112.313, F.S.) However, the Florida Constitution was amended in 2018 to prohibit superintendents and school board members, among others, from lobbying his or her former district or board for compensation on issues of policy, appropriations, or procurement for a period of six years after vacation of his or her public position and from lobbying other governmental entities for

compensation during their term in office. These constitutional provisions go into effect December 31, 2022.

### **Disproportionate Benefit**

The 2018 Constitutional Amendments also included a provision prohibiting government officials and employees from using their position in a manner that results in a disproportionate benefit to themselves, their spouse or children, their employer, any business in which they have an interest, and their spouse or children’s employer, and any business in which their spouse or children have an interest. The Commission on Ethics has proposed a rule defining disproportionate benefit in a manner than aligns fairly closely with existing ethics statutes, and requires that, in order for there to be a violation, the official or employee act with wrongful intent and the action be inconsistent with the proper performance of their position. It is anticipated that advisory opinions will be sought before the 12/31/20 effective date of these provisions, which should provide further guidance.

### **School Board Members**

**Travel Expenses** – Each member of a school board is allowed reimbursement of travel expenses provided that any travel outside the district that exceeds \$500 requires prior approval by the school board to confirm that such travel is for official business of the district and complies with State Board of Education rules. Any request for travel outside the state must include an itemized list detailing all anticipated travel expenses, including, but not limited to, the anticipated costs of all means of travel, lodging, and subsistence. Immediately preceding a request, the public must have an opportunity to speak on the specific travel agenda item. (s. 1001.39, F.S.)

**Compensation** - School board member salaries must be the lessor of the statutory annually calculated salary or the district’s beginning salary for teachers who hold baccalaureate degrees. (s. 1001.395, F.S.)

### **Ethical Conduct Provisions for Superintendents and School Board Members**

Standards of ethical conduct are expanded to include all administrative personnel and school officers. The definition of “school officer” includes superintendents and school board members (s. 1012.01, F.S.).

School boards are required to adopt policies establishing standards of ethical conduct for instructional personnel, administrative personnel, and school officers (school board members and superintendents). The policies must require all such personnel and officers to complete training on the standards, establish the duty of to report, and procedures for reporting, alleged misconduct by other instructional or administrative personnel and school officers which affects the health, safety, or welfare of a student. This specifically includes misconduct that involves engaging in or soliciting sexual, romantic, or lewd conduct with a student. A policies must require the district school superintendent to report to law enforcement misconduct by instructional personnel or school administrators that would result in disqualification from educator certification or employment as provided in s. 1012.315; and include an explanation of the liability protections provided under ss. 39.203 and 768.095, F.S.

A district school board, or any of its employees, may not enter into a confidentiality agreement regarding terminated or dismissed instructional or administrative personnel or school officers who

resign in lieu of termination, based on misconduct that affects the health, safety, or welfare of a student, and may not provide instructional personnel, administrative personnel, or school officers with employment references or discuss the personnel's or officers' performance with prospective employers in another educational setting, without disclosing the personnel's or officers' misconduct. Any part of an agreement or contract that has the purpose or effect of concealing misconduct by instructional personnel, administrative personnel, or school officers which affects the health, safety, or welfare of a student is void, is contrary to public policy, and may not be enforced. (s. 1001.42, F.S.)

### **Offenses against Students by Authority Figures**

Legislation was enacted to clarify offenses against students by authority figures. An authority figure shall not solicit or engage in sexual conduct, a relationship of a romantic nature, or lewd conduct with a student. A person who violates this section commits a felony of the second degree.

“Authority figure” is now defined as a person 19 years of age or older, employed, volunteering for, or under contract with a school, including school resource officers. “School” is defined as provided in s. 1003.01, F.S., including a private school, early learning programs, and the Florida Virtual School. The term does not include a facility dedicated exclusively to the education of adults. “Student” as a person who is enrolled at a school. (s. 800.101, F.S.)

**Additional Reporting Requirements** - Misconduct of engaging or soliciting sexual, romantic, or lewd conduct with students is added to the list of activities that create a duty for instructional personnel and school administrators to report. The school superintendent is also required to report misconduct by instructional or administrative personnel to law enforcement.

**Policy Adoption Requirements** - A school board official forfeits his or her salary for 1 year if the school board knowingly fails to adopt policies that require the district school superintendent to report misconduct as stated above. In addition, any school superintendent who knowingly fails to report misconduct to the law enforcement agencies with jurisdiction over the conduct pursuant to district school board policy adopted above forfeits his or her salary for 1 year following the date of such act or failure to act. (ss. 1001.42 and 1001.51, F.S.)

**School Superintendent** - The district school superintendent is required to notify the parent of a student who was subjected to or affected by misconduct identified above within 30 days after the date on which the school district learns of the misconduct. The notification must inform the parent of: the alleged misconduct, including which allegations have been substantiated if any; whether the district reported the misconduct to DOE if required; the sanctions imposed against the employee, if any; and the support the school district will make available to the student in response to the misconduct.

An employment history check is required for every person employed in any position that requires direct contact with students. (s. 1012.27)

**Personnel Files** - An employee's personnel file must clearly indicate if the resignation or termination of an employee occurred before an investigation of alleged misconduct of a student is concluded. The employee personnel files exemption does not absolve the school district of its duty to provide any legally sufficient complaint to the Department of Education within 30 days after the date on which the subject matter of the complaint comes to the attention of the school district,

regardless of the status of the complaint. (s. 1012.31, F.S.)

**Disqualification from Employment** - A person is ineligible for educator certification or employment in any position that requires direct contact with students if the person has been convicted of a felony offense prohibited under s. 800.101, F.S., relating to offense against students by authority figures. (s. 1012.315, F.S.)

**Educator Certification Requirements – Denial of Certificate** - The Department of Education may deny an applicant a certificate if the department possesses satisfactory evidence that the applicant has committed an act, or that a situation exists, for which the Education Practices Commission would be authorized to discipline a certified educator (rather than revoke a teaching certificate). (s. 1012.56, F.S.)

**Education Practices Commission** - The commission may suspend or revoke a certificate, in addition to other provisions, if the person has engaged in or solicited sexual, romantic, or lewd conduct with a student or minor.

The situations for which the commission may revoke or suspend an educator certificate or other professional license held in Florida or in any other state are expanded. One of these provisions includes the violation of test security as provided in s. 1008.24, Florida Statutes. (s. 1012.795)

**Complaints against Teachers and Administrators** - School districts must file all complaints with the Department of Education within 30 days regardless of whether the subject of the complaint is still an employee of the school district.

A school district is required to immediately notify the Department of Education if the subject of a legally sufficient complaint of misconduct affecting the health, safety, or welfare of a student resigns or is terminated before the conclusion of the school district's investigation. Upon receipt of the notification, the department must place an alert on the person's certification file indicating that he or she resigned or was terminated before an investigation involving allegations of misconduct affecting the health, safety, or welfare of a student was concluded. In such circumstances, the database may not include specific information relating to the alleged misconduct until the information is no longer subject to confidentiality requirements. (s. 1012.796, F.S.)

### **Auditor General**

**Action required within 45 days** - In addition to other provisions, the Auditor General is now required to contact each school board with the findings and recommendations contained within the Auditor General's previous operational audit report. The school board must provide information on evidence of initiation of corrective action within 45 days after the date it is requested by the Auditor General and evidence of completion of corrective action within 180 days after the date it is requested by the Auditor General. If the school board fails to comply within the required timeframe, the Auditor General must notify the Legislative Auditing Committee. (s. 11.45, F.S.)

### **Department of Education - Inspector General**

**Allegations of Fraud or Abuse** - The Inspector General is required to investigate allegations or reports of possible fraud or abuse against a district school board made by any Cabinet member; Senate President, House Speaker, Chair of any committee with jurisdiction over education; or a

member of the board for which an investigation is sought. (s. 1001.20, F.S.)

### **Legislative Auditing Committee - Abuse, Fraud and Waste**

The authority of the Legislative Auditing Committee has been expanded to allow the Governor or designee or the Commissioner of Education or designee to notify the committee of the failure of a local governmental entity including a district school board, charter school, or charter technical career center to comply with the applicable provisions relating to audits by the Auditor General, annual financial reporting requirements, and actions taken during financial emergencies. (s. 11.40, F.S.)

The definition section (s. 11.45, F.S.) relating to the Auditor General was amended and several definitions added including definitions for:

- “Abuse” as behavior that is deficient or improper when compared with behavior that a prudent person would consider a reasonable and necessary operational practice given the facts and circumstances. The term includes the misuse of authority or position for personal gain.
- “Fraud” as obtaining something of value through willful misrepresentation, including, but not limited to, intentional misstatements or intentional omissions of amounts or disclosures in financial statements to deceive users of financial statements, theft of an entity’s assets, bribery, or the use of one’s position for personal enrichment through the deliberate misuse or misapplication of an organization’s resources.
- “Waste” as the act of using or expending resources unreasonably, carelessly, extravagantly, or for no useful purpose.

School board duties were amended to require that the internal auditor determine the adequacy of internal controls designed to prevent and detect fraud, waste, and abuse. The definition of these terms is tied back to the definitions listed above. (s. 1001.42, F.S.)

The requirements related to uniform records and accounts was amended (s. 1010.01, F.S), to add that each school district, college, and state university must establish and maintain internal controls designed to also:

- Prevent and detect fraud, waste, and abuse as defined in s. 11.45(1), Florida Statutes.
- Promote and encourage compliance with applicable laws, rules, contracts, grant agreements, and best practices.
- Support economical and efficient operations.
- Ensure reliability of financial records and reports.
- Safeguard assets.

### **Commission on Ethics**

**Unpaid Fines** - District school boards are now entities from which unpaid fines imposed by the Commission on Ethics may be collected. (s. 112.31455, F.S.)

**Financial Disclosure** - Beginning January 1, 2022, all disclosures filed with the commission must be filed electronically through the electronic filing system maintained by the commission. Each unit of government must provide an email address to any of its officers, members, or employees who must file a financial disclosure or statement of financial interests and then provide such email address to the commission by February 1 of each year. A person required to file a disclosure or

statement must inform the commission immediately of any change in an email address. (s. 112.31446 and various sections of ch. 112, F.S.)

# **Ethics in Government – New Florida Constitutional Provisions**

## **Lobbying Restrictions and Abuse of Office**

### **Summary**

The Florida Constitution Revision Commission (CRC) placed Amendment 12 on the ballot for the 2018 General Election. The amendment relates to lobbying and abuse of office by public officers and passed by almost 80 percent. These provisions directly impact superintendents and school board members.

### **Lobbying Restrictions**

The provision amended Article II, Section 8 relating to Ethics in Government. “Public officer” is defined to include a school board member and superintendent of schools, among other state and local public officers. A public officer is prohibited from lobbying for compensation on issues of policy, appropriations, or procurement before the federal government, the legislature, any state government body or agency, or any political subdivision of Florida, during his or term of office. This does not prohibit a public officer from carrying out the duties of his or her public office. In addition, a school board member and a superintendent is prohibited from lobbying his or her former agency or governing body for compensation for six years after vacation of his or public position. These provisions take effect December 31, 2020.

### **Abuse of Public Position – Disproportionate Benefit**

The constitution currently provides that a code of ethics for all state employees and nonjudicial officers prohibiting conflict between public duty and private interest must be prescribed by law. The amendment added the following language which goes into effect December 31, 2020:

A public officer or public employee shall not abuse his or her public position in order to obtain a disproportionate benefit for himself or herself; his or her spouse, children, or employer; or for any business with which he or she contracts; in which he or she is an officer, a partner, a director, or a proprietor; or in which he or she owns an interest. The Florida Commission on Ethics shall, by rule in accordance with statutory procedures governing administrative rulemaking, define the term “disproportionate benefit” and prescribe the requisite intent for finding a violation of this prohibition for purposes of enforcing this paragraph. Appropriate penalties shall be prescribed by law.

The amendment required the Florida Commission on Ethics to develop a rule defining the term “disproportionate benefit” and prescribing the requisite intent for finding a violation of the prohibition against abuse by public position by October 1, 2019. The Commission on Ethics recently proposed a definition of “disproportionate benefit.” Following the adoption of rules, the legislature must enact implementing legislation establishing penalties for violations of the prohibition against abuse of public position to take effect December 31, 2020.

The Commission on Ethics approved language that defines “disproportionate benefit” at its public meeting on July 26, 2019. The adopted amendment is reproduced below.



### 34-18.001

(1) The purpose of this chapter is to provide notice and guidance to public officers or public employees, as well as to the general public, regarding the definition of the term "disproportionate benefit," as that term is used in Article II, Section 8(h)(2) of the Florida Constitution, as well as the requisite intent for finding a violation of the prohibition contained in Article II, Section 8(h)(2) of the Florida Constitution.

#### (2) Definitions

(a) For the purpose of Article II, Section 8(h)(2) of the Florida Constitution, "disproportionate benefit" means a benefit, privilege, exemption, or result arising from an act or omission by a public officer or public employee inconsistent with the proper performance of his or her public duties.

(3) The Commission will consider the following in determining whether a benefit, privilege, exemption, or result constitutes a "disproportionate benefit":

(a) The number of persons, besides the public officer or public employee, his or her spouse, children, employer, or business with which he or she contracts, in which he or she is an officer, a partner, a director, or a proprietor, or in which he or she owns an interest, who will experience the benefit, privilege, exemption, or result;

(b) The nature of the interests involved;

(c) The degree to which the interests of all those who will experience the benefit, privilege, exemption, or result are affected;

(d) The degree to which the public officer or public employee, his or her spouse, children, employer, or business with which he or she contracts, in which he or she is an officer, a partner, a director, or a proprietor, or in which he or she owns an interest, receives a greater or more advantageous benefit, privilege, exemption, or result when compared to others who will receive a benefit, privilege, exemption, or result;

(e) The degree to which there is uncertainty at the time of the abuse of public position as to whether there would be any benefit, privilege, exemption, or result and, if so, the nature or degree of the benefit, privilege, exemption, or result must also be considered; and

(f) The degree to which the benefit, privilege, exemption, or result is not available to similarly situated persons. As used in this chapter, "similarly situated persons" means those with a commonality or like characteristic to the public officer or public employee that is unrelated to the holding of public office or public employment, or a commonality or like characteristic to the public officer's or public employee's spouse, children, or employer, or to any business with which the public officer or public employee contracts, serves as an officer, partner, director, or proprietor, or in which he or she owns an interest.

(4) The requisite intent for finding a violation of the prohibition in Article II, Section 8(h)(2) of the Florida Constitution is that the public officer or public employee acted or refrained from acting with a wrongful intent for the purpose of obtaining any benefit, privilege, exemption, or result

from the act or omission which is inconsistent with the proper performance of his or her public duties.

Rulemaking Authority Article II, Section 8(h)(2), Florida Constitution and Section 112.322(9), Florida Statutes

# Ethics in Government – Florida Constitutional Provisions

## Article II, Section 8

Effective December 31, 2022, s. 8, Art. II, except s. 8(g), which will take effect December 31, 2020, and will be subsequently redesignated as s. 8(h), Art. II by the amendment effective December 31, 2022, will read:

**SECTION 8. Ethics in government.**—A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse. To assure this right:

(a) All elected constitutional officers and candidates for such offices and, as may be determined by law, other public officers, candidates, and employees shall file full and public disclosure of their financial interests.

(b) All elected public officers and candidates for such offices shall file full and public disclosure of their campaign finances.

(c) Any public officer or employee who breaches the public trust for private gain and any person or entity inducing such breach shall be liable to the state for all financial benefits obtained by such actions. The manner of recovery and additional damages may be provided by law.

(d) Any public officer or employee who is convicted of a felony involving a breach of public trust shall be subject to forfeiture of rights and privileges under a public retirement system or pension plan in such manner as may be provided by law.

(e) No member of the legislature or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of two years following vacation of office. No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals. Similar restrictions on other public officers and employees may be established by law.

**(f)(1) For purposes of this subsection, the term “public officer” means a statewide elected officer, a member of the legislature, a county commissioner, a county officer pursuant to Article VIII or county charter, a school board member, a superintendent of schools, an elected municipal officer, an elected special district officer in a special district with ad valorem taxing authority, or a person serving as a secretary, an executive director, or other agency head of a department of the executive branch of state government.**

(2) A public officer shall not lobby for compensation on issues of policy, appropriations, or procurement before the federal government, the legislature, any state government body or agency, or any political subdivision of this state, during his or her term of office.

(3) A public officer shall not lobby for compensation on issues of policy, appropriations, or procurement for a period of six years after vacation of public position, as follows:

a. A statewide elected officer or member of the legislature shall not lobby the legislature or any state government body or agency.

b. A person serving as a secretary, an executive director, or other agency head of a department of the executive branch of state government shall not lobby the legislature, the governor, the executive office of the governor, members of the cabinet, a department that is headed by a member of the cabinet, or his or her former department.

c. A county commissioner, a county officer pursuant to Article VIII or county charter, a school board member, a superintendent of schools, an elected municipal officer, or an elected special district officer in a special district with ad valorem taxing authority shall not lobby his or her former agency or governing body.

(4) This subsection shall not be construed to prohibit a public officer from carrying out the duties of his or her public office.

(5) The legislature may enact legislation to implement this subsection, including, but not limited to, defining terms and providing penalties for violations. Any such law shall not contain provisions on any other subject.

(g) There shall be an independent commission to conduct investigations and make public reports on all complaints concerning breach of public trust by public officers or employees not within the jurisdiction of the judicial qualifications commission.

**(h)(1) A code of ethics for all state employees and nonjudicial officers prohibiting conflict between public duty and private interests shall be prescribed by law.**

**(2) A public officer or public employee shall not abuse his or her public position in order to obtain a disproportionate benefit for himself or herself; his or her spouse, children, or employer; or for any business with which he or she contracts; in which he or she is an officer, a partner, a director, or a proprietor; or in which he or she owns an interest. The Florida Commission on Ethics shall, by rule in accordance with statutory procedures governing administrative rulemaking, define the term “disproportionate benefit” and prescribe the requisite intent for finding a violation of this prohibition for purposes of enforcing this paragraph. Appropriate penalties shall be prescribed by law.**

(i) This section shall not be construed to limit disclosures and prohibitions which may be established by law to preserve the public trust and avoid conflicts between public duties and private interests.

(j) Schedule—On the effective date of this amendment and until changed by law:

(1) Full and public disclosure of financial interests shall mean filing with the custodian of state records by July 1 of each year a sworn statement showing net worth and identifying each asset and liability in excess of \$1,000 and its value together with one of the following:

a. A copy of the person’s most recent federal income tax return; or

b. A sworn statement which identifies each separate source and amount of income which exceeds \$1,000. The forms for such source disclosure and the rules under which they are to be filed shall be prescribed by the independent commission established in subsection (g), and such rules shall include disclosure of secondary sources of income.

(2) Persons holding statewide elective offices shall also file disclosure of their financial interests pursuant to paragraph (1).

(3) The independent commission provided for in subsection (g) shall mean the Florida Commission on Ethics.

**Note.**—Section 38, Art. XII, State Constitution, provides in part that “[t]he amendments to Section 8 of Article II and Section 13 of Article V shall take effect December 31, 2022; except that the amendments to Section 8(h) of Article II shall take effect December 31, 2020.” The amendments to s. 8, Art. II, which take effect December 31, 2022, include the addition of a new subsection (f), which will result in the redesignation of subsequent subsections. As a result, the amendment to s. 8(h), effective December 31, 2020, will apply to current s. 8(g), until the remaining amendments to s. 8, Art. II take effect and s. 8(g) is redesignated as s. 8(h).

# Who Can Answer My Ethics Questions?

Contact the Commission on Ethics at [www.ethics.state.fl.us](http://www.ethics.state.fl.us)

C. Christopher Anderson, III, is now the Executive Director.

Caroline Klancke is a Senior Attorney and is available to respond to questions. If she 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 the chair 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 formerly served 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).

**Amy Envall** serves as General Counsel for the School Board of Brevard County. Amy received her undergraduate degree in Elementary Education and served as a fourth grade teacher prior to earning her J.D. Before coming to Brevard Public Schools, she served as an attorney and the Ethics Compliance Officer for Orange County Public Schools, as General Counsel for the Clerk of Courts, as an Assistant County Attorney, and as a Trial Court Staff Attorney for the Ninth Judicial Circuit. She also served as the Director of Academic Success and as the Assistant Dean for Academic Programs and Faculty Development at Barry University School of Law. In her experience representing local government agencies, Amy has focused on public records laws, ethics, public procurement, policy revision, and student services. She is admitted to practice before the Supreme Court of the United States of America and the Middle District of Florida. In her spare time, she serves on the Board of Directors for some local non-profit organizations, travels, and is a proud parent of an Eagle Scout and an aspiring opera singer/actress along with her husband, a sworn law enforcement officer.

**Joy Causseaux 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 forty 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.



# Florida Commission on Ethics

*Guide to the Sunshine Amendment and Code of Ethics for Public  
Officers and Employees – 2019  
New 2019 Manual Available at  
<http://www.myfloridalegal.com/sun.nsf/sunmanual>*

## FERPA Resources from the U.S. Department of Education

1. Online Training Modules from the U.S. Department of Education:
  - a. [FERPA 101: For Local Education Agencies](#)
  - b. [FERPA 201: Data Sharing under FERPA](#)
2. Online Short Videos about FERPA from the U.S. Department of Education:
  - a. [School Volunteers and FERPA](#) -- Volunteers are important in helping schools operate efficiently, but it's important to know your role in protecting student information while helping out in your school. This video explains some of a school volunteer's responsibilities to help keep the student information they work with private and secure. The Privacy Technical Assistance Center has also released a corresponding brochure that schools can use to help train their volunteers with their legal responsibilities to protect student data. This brochure can be found [here](#). (3:03)
  - b. [Email and Student Privacy](#) -- Email is an easy way to communicate with students and parents. Prior to sending an email, it's important to evaluate the risk associated with sending student information and recognizing if it is personally identifiable information (PII). This video walks you through best practices on how to email student information. (2:54)
  - c. [How to Use your District's Website to Communicate with Parents about Data Use and Security](#) -- Parents need to feel confident that the education information collected and stored by your district is securely maintained and only used for educational purposes. This video highlights common parent questions and provides best practices that districts can implement to communicate with parents about data privacy. (2:16)
  - d. [The A-B-C's of Student Directory Information](#) -- FERPA allows schools and districts to designate certain basic student information as directory information and share that information without consent if certain additional requirements are met. This video describes why a school would want to use designated student directory information and the types of information that fall into this category. It also explains the process that schools and districts must adhere to when designating directory information. (3:25)
  - e. [Developing a Privacy Policy for Your District](#) -- This video provides an overview and rationale for why districts need to develop a program to protect student data. Also, of note is the companion document linked here which provides the information contained in the video at a more granular level. (2:32)
  - f. [What Parents Need to Know about their Student's Data](#) -- This video, intended for parents, provides guidance and information on what questions they might want to ask their schools or districts if they have questions about the data the district collects and/or maintains. The video also provides an overview of the types of questions parents should ask and why. (2:33)

- g. [Protecting Student Privacy While Using Online Educational Services](#) -- This Privacy Technical Assistance Center teacher training video is aimed at helping K-12 school officials to better protect student privacy while using online educational services and applications. The video, intended for use during teacher in-service days or professional development meetings, offers a short summary of the issue and provides some examples to help educators identify which online educational services and applications are privacy-friendly and protect student data from improper use and disclosure. (9:31)
  
- h. [Student Privacy 101: -- The U.S. Department of Education is committed to student privacy. We administer](#) the Family Educational Rights and Privacy Act (FERPA), and we provide technical assistance to help schools and school districts use best practices in their use and management of information about students. This site aims to assist stakeholders in protecting the privacy of students by providing official guidance on FERPA, technical best practices and the answers to Frequently Asked Questions. Responsibility for the Department's student privacy operations lies in the Office of the Chief Privacy Officer. To learn more about FERPA please click on the video to the right. (4:04)

Last revised: 9-13-19 ade