

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

OFFICE OF THE GENERAL COUNSEL

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MEMORANDUM

TO: Chris Akagbosu, Director – Facility Planning and Real Estate
FROM: Robert Paul Vignola, Deputy General Counsel
VIA: Barbara J. Myrick, General Counsel
DATE: August 4, 2016
SUBJECT: *Fees Chargeable to Early Childhood Entities for Facility Rental*

This memorandum is provided in response to your inquiry as to whether the school district may profit from renting facilities to Early Childhood Program provider. Your question is answered in the affirmative - with a cautionary warning about the possible ramifications of such actions.

The school district has the ability to exercise any power except as expressly prohibited by the State Constitution or general law. See Section 10021.31(2), Florida Statutes. No statutory or constitutional provision expressly prohibits allowing Early Childhood Program provider to make use of district school facilities nor is there an express statutory or limitation upon the fees that may be charged for such use.

There is precedent for a school district to charge fees for goods and services greater than the school district's actual cost. For example, Section 1002.33(20)(b), Florida Statutes, permits district school boards to enter into contracts to provide goods and services to charter schools at rates greater than the school district's actual cost.

Generally, the fees applicable to use of school district facilities for non-school purposes are established by School Board Policy 1341. However, Rule 6 of School Board Policy 1341 provides that the policy's terms are inapplicable to "vendors who are awarded contracts as a result of a Request for Proposal (RFP) process including, but not limited to, any entities that provide before and after school child care or before and after tutorials, etc." Since any vendors providing an Early Childhood program will be selected through the RFP currently under development by your staff, the fees that may be charged to awardees making use of district school facilities are not limited to those specified under School Board Policy 1341.

It is our understanding that the RFP being developed by the school district would preclude Early Childhood Program providers from use of district facilities that has been used to

secure financing under a bonds program or a certificate of participation. That action should eliminate any potential conflict with district financing measures.

The tax exempt status of a district school facility should not be at risk due to a school district's realization of a profit from fees charged to an Early Childhood Program provider for use of that property. Although an Early Childhood Program provider's leasehold interest in a district school facility may be subject to ad valorem taxation subject to Section 196.199(4), Florida Statutes, such tax liability would be that of the Early Childhood Program provider and not that of the district school board. However, any agreement with the provider should permit the district school board to immediately terminate the agreement if it impairs the tax exempt status of the property and should provide that the outside entity will be responsible to immediately reimburse the school district for any tax liability it may incur should the subject property be subject to taxation.

If you have any questions or require additional assistance, please contact this Office at your convenience.

RPV:mi

c: Leslie Brown, Chief Portfolio Services Officer
Shanika "Nikki" Jackson-Hunter, Real Estate Analyst – Real Estate & Environmental
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