

**THE
CITY OF CORAL GABLES
BOARDS AND COMMITTEES
REFERENCE GUIDE**



BOARDS & COMMITTEES RULES

**SUNSHINE LAWS
PUBLIC RECORDS LAWS
QUASI-JUDICIAL BOARDS SPECIAL RULES
STATE ETHICS LAWS
COUNTY ETHICS LAWS
FINANCIAL DISCLOSURE AND GIFT REPORTING
HONEST SERVICES LAWS**

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INTRODUCTION

We are pleased to provide you with the City of Coral Gables Boards and Committees Reference Guide. This brochure will provide you with a framework and understanding of certain rules and regulations by which Coral Gables elected and appointed officials, employees, and board members must abide.

This guide is by no means an exhaustive list of the statutes, codes or regulations which affect you in your service to the City. However, it provides a general overview of those rules that you must follow. These regulations provide rules on meetings, parliamentary procedure, open government, public records, the acceptance and reporting of gifts, use of confidential information, and the prohibited payments or appearance before City boards or the City Commission.

It is important to note that you should review the specific language used in each applicable law. If you have any questions or concerns, please do not hesitate to contact the Office of the City Attorney (305-460-5218/CLeen@CoralGables.com).

Thank you for your service to the Coral Gables community.

Craig E. Leen

City Attorney

1. CITY of CORAL GABLES BOARDS, COMMISSIONS AND COMMITTEES ORDINANCE

QUALIFICATIONS AND APPOINTMENT OF MEMBERS

The City Commission may appoint any City resident to any City board.

APPOINTED MEMBER REQUIREMENTS

- Unless otherwise provided in the City Charter or the Code or waived by a four-fifths vote of the City Commission, all board members shall be permanent residents of the City.
- The Commission may also appoint qualified non-resident members in some instances, pursuant to Section 88 of the City Charter.
- The Commission may consider technical, professional, financial, business or administrative expertise of prospective board members.
- No board member shall serve on more than one permanent board at the same time.
- All board members shall serve without compensation.
- Requests for travel expenses for members attending seminars, conferences, and meetings, shall be submitted during the budget review process.

BOARD MEMBER TERMS

- The terms of office of the members of each board shall be for two years or until the nominating Commissioner leaves office, whichever occurs first, unless otherwise provided in the City Charter or Code.
- Except for the Code Enforcement Board, the Retirement Board, and Construction Regulation Board, board members may serve no more than eight consecutive years on any one board, with the exception of members whose terms exceed eight years and who have been approved by a majority of the Commission to fulfill the remainder of their term.
- No person shall serve concurrently on more than one board unless the second board is an ad hoc board.

MEMBER ATTENDANCE AT MEETINGS AND RESIGNATION

- A board member may resign at any time, however, the member will not be eligible for appointment to the same board for a period of time equal to a full term.
- A board member may be removed by the City Manager due to excessive absences.

EXCESSIVE ABSENCE IS DEFINED AS:

- More than three unexcused absences in a consecutive twelve month period for a board which meets monthly, or more than three excused or unexcused absences for a board that meets less than once a month.
- More than five unexcused absences in a consecutive twelve month period for a board meeting more often than monthly on a regular basis.
- This provision does not apply to Reservists in the United States Armed Forces or members of the Florida National Guard on active duty, or employees whose services are considered essential for national, state or homeland defense.

CHAIRPERSON; BYLAWS

- Boards shall meet annually, no later than August, to elect one of their members as chairperson and vice-chairperson.
- Boards shall adopt rules and regulations to govern its proceedings, including rules and regulations governing attendance, and keep a record thereof.

- Boards must adhere to Robert's Rules of Order, Newly Revised, to the extent that they do not conflict with the City Code or State law.
- Members shall be required to take an oath or affirmation filed in the City Clerk's office.
- Meetings of two or more members shall be open to the public in accordance with the Sunshine Law.
- Boards must provide written notice of meetings to the City Clerk at least seven days in advance, except in the case of emergency meetings.
- No member may abstain from voting except when there is a conflict of interest.
- All board members shall be required to file financial disclosure, as provided by state or county requirements.
- No board may engage in fundraising without express authority and subject to conditions imposed by the City Commission.
- No City board shall endorse candidates for public office, or support a particular position on a public question. Should any member of a City board violate this section, it shall be deemed a tender of resignation from the board.

ANNUAL REPORT

The chairperson from each City board and committee shall submit an annual report, approved by the board, by October 1 of each year to the City Manager stating the board's purpose and accomplishments and whether the ordinance creating the board needs to be amended.

2. GOVERNMENT-IN-THE-SUNSHINE LAW

All meetings of any board, committee, or Commission ("Boards") of the City of Coral Gables shall be subject to the Government-in-the-Sunshine Law. Florida Statute § 286.011.

THE SUNSHINE LAW APPLIES TO:

- Elected and appointed boards.
- Any gathering of two or more members of the same board to discuss some matter which will foreseeably come before that board for action.

THREE BASIC REQUIREMENTS OF THE SUNSHINE LAW

1. Meetings of any board must be open to the public;
2. Reasonable notice of the meeting must be given;
3. Minutes of the meeting must be promptly recorded and the record shall be open to the public for inspection.

Furthermore, no resolution, rule, regulation or formal action shall be considered binding unless taken or made at an open meeting.

A MEETING UNDER THE MEANING OF THE SUNSHINE LAW INCLUDES, BUT IS NOT LIMITED TO, THE FOLLOWING:

- Written correspondence between board members;
- Telephone conversations;
- Use of computers;
- Delegation of authority to a single individual;
- The use of nonmembers as a liaison between board members.

PENALTIES FOR VIOLATING THE SUNSHINE LAW

Non-criminal penalties: Any public officer who violates the Sunshine Law is guilty of a noncriminal infraction, and subject to a fine not exceeding \$500.

Criminal penalties: Any member of a board or Commission who *knowingly* violates the Sunshine Law is guilty of a second-degree misdemeanor and subject to a fine not exceeding \$500 and may serve a term of imprisonment not exceeding 60 days.

The State Attorney may pursue actions against the public official on behalf of the state for either criminal or non-criminal violations of the Sunshine Law. Private citizens may also pursue actions against a public official for criminal or non-criminal violations, or they may seek injunctive relief.

3. PUBLIC RECORDS LAW

Florida's Public Records Law is very broad. Florida Statutes §§ 119.01 through 119.15 provide that:

- Any state, county, district or municipal officer, department, division, board, bureau, Commission, other public or private agency, person, partnership, corporation, or business entity acting on behalf of any **public agency**.
- *Has a duty* to provide access to public records for personal inspection and copying *by any person*.

PUBLIC RECORDS INCLUDE:

- All documents, regardless of physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency, including the following: Papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software or other material.

EXAMPLES OF PUBLIC RECORDS

- Salaries;
- Completed audits;
- Tape recordings of staff, Commission or board meetings;
- Training videos;
- Anonymous letters sent to City officials alleging misconduct by City employees;
- All records generated by departments and City boards.
- E-mails of board members regarding the business of the board on which they serve.

MAINTENANCE AND ACCESS TO PUBLIC RECORDS

- All public records should be kept in the buildings in which they are used and every person who has custody of a public record shall permit the record to be inspected and copied by any person, at any reasonable time, under reasonable conditions and under supervision by the custodian or employee.

PENALTIES FOR PUBLIC OFFICERS WHO VIOLATE THE PUBLIC RECORDS LAW

Non-criminal penalties: Any public officer who violates any provision of the Public Records Law is guilty of a noncriminal infraction and subject to a fine not exceeding \$500.

Criminal penalties: Any public officer who *knowingly* violates the inspection and copying of records provision of the Public Records Law, § 119.07(1), is subject to:

- Suspension and removal or impeachment, AND is guilty of a first-degree misdemeanor punishable as provided in §§ 775.082 and 775.083, Florida Statutes.

4. QUASI-JUDICIAL BOARDS and EX-PARTE COMMUNICATIONS

QUASI-JUDICIAL BODIES render determinations by applying the facts of a particular situation to zoning principles and objectives set out in the zoning code.

- Examples: Commissioners, board members, or other officials that sit in quasi-judicial or judge-like roles when hearing matters involving zoning applications.

EX-PARTE COMMUNICATIONS are communications with one party to a matter without hearing from the opposing party.

LIMITATIONS ON EX-PARTE COMMUNICATIONS (JENNINGS RULE):

THE JENNINGS RULE prohibits ex-parte communications with a Commissioner or board member sitting in a quasi-judicial role. The Jennings rule was established in the judicial decision of *Jennings v. Dade County and Schatzman* and states:

- Ex-parte contact with a quasi-judicial officer is presumed to be prejudicial to the other party who is not present.
- Upon proof of the ex-parte contact, the aggrieved party is entitled to a new hearing on the matter unless the party who engaged in the ex-parte contact proves that the contact was not prejudicial.

Jennings v. Dade County and Schatzman, 589 So.2d 1337 (Fla. 3d DCA 1991), *rev. denied*, 598 So.2d 75 (Fla. 1992).

THE JENNINGS RULE APPLIES TO THE FOLLOWING:

Quasi-judicial zoning actions, including:

- Granting of variances;
- Conditional use permits;
- Site plan approval;
- Special exceptions;
- Recent case law has applied the Jennings Rule to vested rights applications and to single piece of property land use amendments.

THE SNYDER RULE

The Florida Supreme Court has defined rezoning as quasi-judicial and subject to ex-parte communication prohibitions if:

- The rezoning has an impact on a limited number of property owners;
- The decision is contingent upon facts arrived at from distinct alternatives presented at a hearing; AND
- The decision can be viewed as applying a policy rather than setting a policy.

Bd. of County Com'rs of Brevard County v. Snyder, 627 So. 2d 469, 474 (Fla. 1993).

NEITHER RULE APPLIES IN THE FOLLOWING SITUATION:

- Legislative action resulting in the formulation of a general policy rule;
- Example: general master plan adoptions, City-wide rezoning and large-scale rezoning.

TYPICAL SITUATIONS WHERE EX-PARTE COMMUNICATION IS PROHIBITED:

- Commissioners/board members cannot discuss a matter pending before the Commission/board with an applicant or a representative of the applicant, or through an intermediary;
- Commissioners or their representatives cannot discuss with a board member, applicant, or opponent a matter pending before the Commission;
- Commissioners/board members cannot discuss matters pending before the Commission/board with staff members, except for request for specific application information.

TYPICAL SITUATIONS WHERE EX-PARTE COMMUNICATION IS ALLOWED:

- Commissioners/board members may request information from staff provided the request and response are in writing and part of the file which should be introduced at hearing;
- Commissioners/board members may read letters regarding a matter pending before the Commission/board provided they are made part of the file which should be introduced at hearing.

CITY ORDINANCES APPLICABLE TO QUASI-JUDICIAL BOARDS:

No board member, after deliberating, considering, ruling or recommending on a matter filed before their board, shall appear before the City Commission to testify as an affected party. However, the chairperson of a board may appear before the City Commission to provide the board's recommendation.

Please direct specific questions to the Office of the City Attorney.

5. STATE ETHICS LAWS

CONFLICT OF INTEREST AND VOTING REQUIREMENT

State voting laws apply to state, county or municipal board, Commission or agency meetings. (Florida Statute § 286.012).

- No member of any board, Commission, or agency may abstain from voting at any meeting at which an official decision, ruling, or other official act is to be taken or adopted unless there exists a conflict of interest;
- A vote shall be recorded or counted for each member present;
- When there is a possible conflict of interest, *the member shall so announce at the meeting and abstain from voting* and comply with the disclosure requirements of the Florida Code of Ethics for Public Officers and Employees at § 112.3143 listed below.

FLORIDA CODE OF ETHICS FOR PUBLIC OFFICIALS AND EMPLOYEES

An independent Commission on Ethics at the state level oversees the standards of conduct for state, county and City officers and employees. (Florida Statute § 112.320).

The Florida Code of Ethics for Public Officers and Employees provides that:

- Public officials are independent and impartial;
- Public office not be used for private gain other than remuneration provided by law;
- When there is a conflict of interest, a board member must abstain from voting. (Florida Statute § 112.3143(3)(a)).

Conflict of interest is defined as a "situation where regard for private interest may lead to a disregard of a public duty or interest." (Florida Statute § 112.312(8)).

A public officer is defined as "any person elected or appointed to hold office in any agency, including a person serving on an advisory board." (Florida Statute § 112.313(1)).

CONFLICT OF INTEREST AND DISCLOSURE REQUIREMENTS FOR PUBLIC OFFICERS

1. With limited exceptions, having any contractual or employment relationship with any agency of which he/she is an officer or employee is prohibited. (Florida Statute §§ 112.313(3) and 112.313(7)).
2. Public officials are prohibited from *voting* in an official capacity upon any measure which would result in private gain or loss; which he or she knows would result in the private gain or loss of any principal, parent organization or subsidiary by whom he or she is retained; or which he or she knows would benefit a relative or business associate.

If a board member cannot vote based on the foregoing, he or she must satisfy the following disclosure requirements:

- a) Publicly state to the assembly the interest in the matter from which he or she is abstaining from voting prior to the vote being taken; AND
- b) Within 15 days after the vote occurs, the officer shall disclose the nature of his or her interest in a memorandum filed with the clerk responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes as a public record. (Florida Statute § 112.3143(3)(a)).

MISUSE OF PUBLIC POSITION

- No public officer or agency employee shall corruptly use or attempt to use:
 - His or her official position
 - Or property
 - Or any resource within his or her trust
 - Or perform his or her official duties
- To secure a special privilege, benefit, or exemption for him or herself or others. (Florida Statute § 112.313(6)).

To act corruptly is defined as:

- Acting with *wrongful intent*
- For the purpose of obtaining, or compensating or receiving compensation for any benefit
- Resulting from an act or omission by a public servant inconsistent with the proper performance of public duties. (Florida Statute § 112.312(9)).

THE PROVISION IN PRACTICE

- Many actions undertaken by public officers and employees, by necessity, result in benefit to a party or parties, sometimes to the detriment of others.
- It is essential to understand that the key element of the statute is *corruption* which requires:

- 1.) acting with wrongful intent for personal benefit;
- 2.) in a manner inconsistent with one's public duties.

- If a public official with voting privileges casts a vote or makes a unilateral decision on an issue which is unpopular or may benefit a select group or a single person, he or she cannot be said to be acting inconsistent with his or her public duty, and therefore cannot be acting corruptly within the meaning of the statute.

6. MIAMI-DADE COUNTY CONFLICT OF INTEREST AND CODE OF ETHICS ORDINANCE

Applies to all City Commissioners, employees and boards.

TRANSACTING BUSINESS 2-11.1(C)(3)

Advisory and quasi-judicial board members may not contract with any city department subject to the regulation, oversight, management, policy-setting, or quasi-judicial authority of the board of which the person is a member.

GIFTS 2-11.1(E)

It is unlawful to solicit or demand a gift in exchange for an official duty or public action.

- A gift is defined as anything of economic value, including meals, travel, loans, entertainment, hospitality, or a promise, without adequate consideration;
- All gifts received within a quarterly period that exceed \$100.00 in value must be reported;
- Food and beverages consumed at a single meal are considered a single gift and shall not be reported if the total value does not exceed \$100.00.

EXEMPTIONS:

- Gifts solicited for official government business including: City or County-sponsored events, charitable activities;
- Gifts exchanged between co-workers, relatives, and friends;
- Political contributions;
- Awards for civic and professional achievement;
- Informational books, pamphlets, and related materials instructive in nature;
- Gifts solicited by Commissioners on behalf of any nonprofit organization for use solely by that organization, where neither the Commissioner nor his or her staff receives any compensation as a result of the solicitation.

OFFICIALS SOLICITING FOR CHARITABLE ORGANIZATIONS AND PROFESSIONAL ASSOCIATIONS UNRELATED TO OFFICIAL COUNTY BUSINESS

- Cannot mention that they are elected or appointed officials;
- Cannot use County letterhead or other resources to solicit contributions;
- Cannot solicit during public meetings;
- Cannot specifically target County vendors or coerce employees and citizens to contribute.

EXPLOITATION OF OFFICIAL POSITION 2-11.1(G)

Elected and appointed officials, board members and employees may not use or attempt to use their official position to secure special privileges and exemptions for themselves or others.

APPEARANCES 2-11.1(M)(2)

Regarding the board on which they serve, advisory and quasi-judicial personnel

- May not appear before the board on behalf of third parties seeking a benefit from the board;
- May not receive compensation from third parties seeking a benefit from the board.

The prohibition on appearance means that one cannot submit documents or correspondence, appear in meetings with staff, or appear before any board or agency on behalf of a client, organization, or nonprofit.

LOBBYING 2-11.1(S)

Lobbyist is defined as anyone seeking to encourage the passage, defeat, or modifications of:

- An ordinance, resolution, action, recommendation or decision of the County Commission, or any board or committee.

Requirements include:

- Registering as a lobbyist and paying annual fee;
- Filing timely expenditure reports by September 1st (failure to file results in automatic suspension until fines are paid);
- Lobbyist contracts *cannot* contain contingency fees;
- Lobbyists *are not required* to register for each separate issue on which they have been retained.

WHO IS NOT A LOBBYIST?

- Attorneys representing individuals and corporate entities in quasi-judicial proceedings;
- Expert witnesses providing specialized information at public meetings;
- Employees of the principal whose employment does not include lobbying;
- Representatives of nonprofit organizations who appear at public meetings without special compensation to express support or opposition to an item;
- Community-based organizations, even when making contacts outside of public meetings, when grants or other funding matters are involved;
- Individuals who appear for the purpose of self-representation;
- Any public officer, employee, or appointee who only appears in his or her official capacity.

VOTING CONFLICTS FOR MEMBERS OF ADVISORY AND QUASI-JUDICIAL BOARDS 2-11.1(V)

Board members may not vote on any matter if the member will be directly affected by the board action **and** if the board member has any of the following relationships with the persons appearing before the board:

- | | |
|---------------|---------------|
| ◦ Officer | ◦ Director |
| ◦ Partner | ◦ of counsel |
| ◦ consultant | ◦ employee |
| ◦ fiduciary | ◦ beneficiary |
| ◦ stockholder | ◦ bondholder |
| ◦ debtor | ◦ creditor |

7. CITY OF CORAL GABLES CODE OF ETHICS

Applies to all City Commissioners, employees, board and committee members. It constitutes the minimum standard of ethical conduct for all autonomous, quasi-judicial, advisory and departmental personnel. § 2-222 et. seq.

GENERAL RULES:

DISCLOSURE OF GIFTS

- It is unlawful for a public official, Commissioner, candidate, employee or any of the above-stated personnel to accept, offer, give or agree to give gifts because of an official public action taken or not taken, a legal duty performed or not performed, a legal duty violated, or attendance or absence from a public meeting at which official action is to be taken.
- City personnel, employees, candidates, Commissioners, and immediate family members shall disclose any gift or series of gifts valued at over \$100.00.
- Disclosure requires filing a copy of the disclosure form for "local officers" required by Florida Statute Chapter 112 with the City Clerk, simultaneously with the County Clerk and the Secretary of State.

WHAT QUALIFIES AS A GIFT?

- Money
- Services
- Loan
- Travel
- Entertainment
- Hospitality
- Item or promise

WHAT DOES NOT QUALIFY AS A GIFT:

- Political contributions specifically authorized by state law.
- Gifts from relatives or household members, unless the person is acting on behalf of a third party to deliver a gift that is prohibited.
- Professional awards.
- Books, reports, periodicals or pamphlets of an informational or advertising nature.

EXPLOITATION OF OFFICIAL POSITION PROHIBITED

No public official, Commissioner, candidate, employee or personnel shall use or attempt to use an official position to secure special privileges or exemptions for that person or others, except as permitted by other ordinances or resolutions.

ACQUIRING FINANCIAL INTERESTS

No public official, Commissioner, candidate, employee, or personnel shall acquire a financial interest in a project, business entity or property if the person believes or has reason to believe the financial interest may be directly affected by official actions of the city or agency of which the person is an employee.

PROHIBITION ON USE OF CONFIDENTIAL INFORMATION

- No public official, Commissioner, candidate, employee, or personnel shall accept employment or engage in any business or professional activity which would reasonably require the disclosure of confidential information acquired by reason of an official position
- That person shall never disclose confidential information gained through an official position with the City, nor shall that person ever use such information directly or indirectly for personal gain.

8. FINANCIAL DISCLOSURE AND GIFT REPORTING

STATE AND COUNTY REQUIREMENTS

STATE FINANCIAL DISCLOSURE LAWS - WHO MUST FILE:

Commissioners, boards and committee members designated by the State Ethics Commission including those listed below:

- Appointed board members (except for purely advisory boards) and members of Commission quasi-judicial boards.
 - Examples of Advisory Bodies required to file State Financial Disclosure:
 - Board of Adjustment
 - Board of Architects
 - Code Enforcement Board
 - Construction Regulation Board
 - Historic Preservation Board
 - Planning and Zoning Board
 - Members of pension and retirement Boards
1. Every local officer listed below, *even if there are no financial interests requiring disclosure*, in which case the statement shall be marked "not applicable"
- Any person elected to office and any person appointed to fill a vacancy in an elected office.
 - Any person holding one or more of the following positions:
 - Mayor
 - City Manager
 - City Attorney
 - City Clerk
 - City Building Code Inspector
 - City water resources, pollution control or environmental director
 - City administrator with power to grant or deny a land development permit
 - Chief of Police and Fire Chief
 - Purchasing agent with authority to make purchases over \$15,000

WHAT TO FILE:

1. FINANCIAL DISCLOSURES: The Miami-Dade County Elections Department will send Form 1 entitled Statement of Financial Interests to those required to file with the State. These forms must be filed with the County Supervisor of Elections.

- *Compliance with the State disclosure requirements automatically satisfies the County disclosure requirements.*

FILE BY: No later than July 1 of each year, and for newly hired local officers, within 30 days of the date of employment or appointment.

2. GIFTS: Persons listed above must file Form 9 Quarterly Gift Disclosure only if they received a gift or series of gifts worth over \$100 during the reporting period. The form must be sent to the State Commission on Ethics.

FILE BY: On or before the last day of any calendar quarter in which a reportable gift was received

COUNTY FINANCIAL DISCLOSURE LAWS - WHO MUST FILE:

1. Anyone serving on specific advisory bodies not required to file with the State, but which must file with the County.
 - Advisory Bodies Required to File County Financial Disclosure:
 - Construction regulation board
 - Cultural development board
 - Health Facilities Authority
 - Insurance advisory committee
 - Parking advisory board
 - Property advisory board
2. Any person holding any of the following positions:
 - Department directors, assistants and deputy department heads
 - Police chief, deputy chief, majors and captains
 - Building and zoning inspectors
 - Architectural, professional engineer, landscape architects or registered land surveyors performing services to the City under contract
 - Members of semi-autonomous boards and agencies performing day-to-day policy setting, operation and management of certain City functions and not required to file with the State
 - Personnel performing quasi-judicial functions and not required to file with the State
 - Candidates for municipal elective office
 - City Attorney and Assistant City Attorneys
 - City Manager, Assistant City Managers and Special Assistants
 - City Clerk and Deputy City Clerk

WHAT TO FILE:

1. FINANCIAL DISCLOSURES: Those required to file with the County only need submit **one of the following** to be filed with the City Clerk: Current income tax return, OR Financial Statement, OR Source of Income Statement OR the State Statement of Financial Interests Form 1.

- *Compliance with the County requirements **does not** satisfy the State requirements.*

FILE BY: No later than 12:00 Noon on July 1 of each year.

2. GIFTS: The persons listed above must file Form 9 Quarterly Gift Disclosure only if they received a gift or series of gifts worth over \$100 during the reporting period.

FILE BY: On or before the last day of any calendar quarter in which a reportable gift was received

9. HONEST SERVICE LAWS

Under federal law, the citizens of a community are entitled to the honest services of their elected officials. When a government official decides on how to proceed in an official endeavor (such as voting on a matter before them) his/her constituents have a right to have their best interests form the basis of that decision. If the official instead secretly makes their decision based on personal interests (such as when they either accept a bribe or personally benefit from an undisclosed conflict of interest) the official has defrauded the public of their honest services. 18 U.S.C. § 641, 654, 666

Honest services fraud occurs when an official devises or intends to devise any scheme to defraud others. 18 U.S.C. §1341, 1346. A scheme to defraud is a scheme to deprive another of an intangible right of honest services. Examples include a failure to disclose conflicts of interest; embezzlement of public funds; bribery of public officials. See also 18 U.S.C. §201, 1503, 1512

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