

Business Operations  
Ofelia San Pedro, Deputy Superintendent

**SUBJECT:            PROPOSED SETTLEMENT AGREEMENT – JORGE GOUGH,  
PERSONAL REPRESENTATIVE OF THE ESTATE OF JAIME  
GOUGH, MARIA GOUGH, INDIVIDUALLY AND JORGE GOUGH,  
INDIVIDUALLY v. THE SCHOOL BOARD OF MIAMI-DADE  
COUNTY, FLORIDA, CLAIM NO: 00074-141806-GB-01**

Jaime Gough was a 14 year old eighth grade gifted student attending Southwood Middle School in Pinecrest, Florida. He was killed in a second floor bathroom in a toilet stall on February 3, 2004. Miami-Dade County Police arrested student Michael Hernandez, also a 14 year old gifted student at Southwood Middle School. He has been charged with first degree murder. The criminal case is pending.

The Gough family placed The School Board of Miami-Dade County, Florida on notice of a claim pursuant to Florida Statute 768.28 by letter dated February 19, 2004. The family is represented by attorneys Gregg Schwartz and Lee Marks. Upon receipt of Notice of Claim, the Office of Risk and Benefits Management referred the matter to the Board's third party claims administrator, Gallagher-Bassett Services, Inc., which had already established a claim file, and had put the School Board's excess liability insurance carrier, United Educators, on notice. The Board Attorney's Office assigned handling of the file to outside counsel, Mr. Jeffrey Mowers, Esquire, of the firm Pyszka, Blackmon, Levy, Mowers & Kelley, P.A.

A pre-suit mediation was held on September 30, 2004. At mediation, plaintiff's counsel initially made a settlement demand of \$5 million. By the close of mediation, the demand was reduced to \$2.2 million. Mr. Mowers has been in constant communication with opposing counsel regarding the possibility of settling the claim prior to a lawsuit being filed against the School Board. Mr. Mowers and the Office of Risk and Benefits Management have also been in contact with the Board's excess liability insurance carrier, who tendered its limits of liability of the School Board's excess liability insurance policy in the amount of \$500,000, excess of its \$200,000 self insured retention.

**GOOD CAUSE  
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A proposed settlement of this claim has now been structured, and is being recommended to the Board. Approval of the settlement will result in a total settlement of the case in the amount of \$1.7 million. If approved by the School Board, an initial payment of \$700,000 will be made within 30 days of the execution of the settlement agreement, consisting of \$200,000, representing the Board's self-insured retention as well as the \$500,000 from the Board's excess liability insurance carrier. The balance of the settlement (\$1 million) would require passage of a legislative claims relief act (Claims Bill), pursuant to the provisions of Section 768.28, Florida Statutes. The settlement includes the provision that the Claims Bill must become law by the end of the 2008 Legislative Session, and is conditioned upon a Stipulated/Agreed Claims Bill wherein the Board agrees to support same, if called upon to do so as set forth in the proposed Settlement Agreement and Stipulation For Agreed Florida Claims Bill, which has been sent to the Board under separate cover. A specific provision of the settlement agreement is that in the event plaintiff's counsel is not successful in obtaining passage of the Claims Bill by the end of the 2008 Legislative Session, then the final and total settlement to the Gough Family for any and all claims against the Board shall be \$700,000.

The Board Attorney's Office is in support of this settlement, as well as the Office of Risk and Benefits Management, and the Board's excess liability insurance carrier. All required Board funds for this settlement have been properly reserved in the Board's Self Insured General Liability Claims Fund (0100,2273,0000,0000,2001).

This item does not appear in the regular agenda. There is good cause to vary from the agenda in order to timely pursue resolution of this matter prior to litigation.

**RECOMMENDED:** That The School Board of Miami-Dade County, Florida, approve the Settlement Agreement and Stipulation For Agreed Florida Claims Bill reached with the Law Offices of Gregg Schwartz, P.A. in the case of Jorge Gough, as Personal Representative of the Estate of Jaime Gough, Maria Gough, individually and Jorge Gough, individually v. The School Board of Miami-Dade County, Florida, Claim No. 000074-141806-GB-01.

OSP:sc