

Office of School Board Attorney
JulieAnn Rico, Board Attorney

SUBJECT: APPROVAL AND CONFIRMATION OF OUTSIDE LEGAL COUNSEL IN THE CASE OF American Civil Liberties Union of Florida, Inc., Miami-Dade Student Government Association v. Miami-Dade County School Board and Rudolph F. Crew, U.S.D.C. Case No. 06-21577-CIV-GOLD/Turnoff

COMMITTEE: SCHOOL SUPPORT ACCOUNTABILITY

On June 21, 2006, the School Board was served with the Complaint filed by the American Civil Liberties Union regarding the Board's decision to replace a series of school library books, including *Vamos a Cuba*. Subsequently, on June 27, 2006, Plaintiffs filed a Motion for a Temporary Restraining Order. On that same date, a status conference was held before U.S. District Judge Alan Gold. At this status conference, Judge Gold denied Plaintiffs' motion and scheduled a preliminary injunction hearing for July 21, 2006.

Due to the immediate need for the retention of defense counsel for the Board and the Superintendent, the Board Attorney, after reviewing proposals and speaking with other candidates, selected Mr. Richard J. Ovelmen of Jordan Burt LLP as outside legal counsel in this matter. Mr. Ovelmen is an accomplished trial attorney with almost thirty years of experience concentrating on constitutional issues, particularly First Amendment law. Throughout his career Mr. Ovelmen has successfully represented numerous clients, has served as General Counsel to the Miami Herald Publishing Company, and currently serves as Special Outside Counsel to the City of Miami Beach. A copy of Mr. Ovelmen's resume will be provided to the Board under separate cover.

For the foregoing reasons, the School Board Attorney recommends that Mr. Ovelmen serve as outside legal counsel for the School Board and the Superintendent in this case and that the Board confirm his selection as outside counsel. In order to protect the Board's and the Superintendent's interests, Mr. Ovelmen has been engaged, pursuant to Board Rules, under a \$25,000 consultant contract. It is anticipated that the latter contract will be insufficient to provide for Mr. Ovelmen's representation for a significant period of time. Accordingly, approval is sought for the continued retention of Mr. Ovelmen as outside counsel, under a new contract, for the duration of the litigation of this matter. The estimated cost of outside counsel under the proposed fee structure, through the preliminary hearing phase, is under \$60,000. These costs will be funded through the district's Risk Management Loss Fund.

RECOMMENDED: That The School Board of Miami-Dade County, Florida authorize and confirm the retention of Richard J. Ovelmen, Esquire and his firm, Jordan Burt LLP, as counsel for the Board and the Superintendent in the case known as American Civil Liberties Union of Florida, Inc., Miami-Dade Student Government Association v. Miami-Dade County School Board and Rudolph F. Crew, U.S.D.C. Case No. 06-21577-CIV-GOLD/Turnoff, subject to the supervision of the School Board Attorney. Mr. Ovelmen, a litigation partner with Jordan Burt LLP, will be compensated at the discounted rate of \$414 per hour; his associates will be compensated at \$171 to \$270 per hour. A report of the costs associated with this litigation will be provided to the Board on a monthly basis.

JAR/kr