

Office of Superintendent of Schools
Board Meeting of December 15, 2010

December 14, 2010

Office of School Board Attorney
Walter J. Harvey, Board Attorney

**SUBJECT: YEARLY REPORT TO THE BOARD AND AUTHORIZATION FOR
THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA TO
ACCEPT ANNUAL REPORT**

COMMITTEE:

**LINK TO
STRATEGIC
FRAMEWORK: FINANCIAL EFFICIENCY/STABILITY**

The School Board, at its meeting of October 14, 2009, approved the restructuring of the School Board Attorney's office to be more adequately aligned to the District's present and projected long term legal needs. This agenda item requests that the Board accept the School Board Attorney's 2010 Annual Report. An oral report concerning the activities, accomplishments, and milestones detailed in the Annual Report was previously provided on September, 1, 2010.

HIGHLIGHTS

We are pleased to report that the comprehensive Rules Revision Project (the first time since 1974), approved by the Board at its meeting of April 14, 2010, is proceeding seamlessly with District staff and is on schedule. Workshops and meetings are in progress to ensure that the Board's Policies are current and provide effective governance for the School Board and the school system. District staff and the School Board Attorney's Office have committed to a timeline and anticipate that an entire set of revised Board Policies (Rules) will be ready for presentation to the School Board by early 2011.

We are also proud to report that the School Board Attorney's Office has succeeded in implementing a variety of strategies for the resolution of outstanding litigation and other disputes. The point is particularly illustrative in the area of construction. Since August 2009, many outstanding cases and claims have been closed, many cases have been handled in-house and the total attorneys' fees have been reduced to approximately \$929,000. This is the first time attorneys' fees in construction have been under \$1 million in well over a decade (see attached PowerPoint chart, page 10).

**REVISED
G-4**

ORGANIZATION

The School Board Attorney's Office is in a continued state of proactive adjustments to meet the demands for legal services and to efficiently and effectively provide legal services.

The School Board Attorney's Office participated in a variety of initiatives of the School Board to reduce costs, including the comprehensive revisions of the Personnel Investigative Model (PIM) Manual and management's initiatives that reduced alternate assignment costs.

ANNUAL REPORT

Earlier in the year, the School Board Attorney's Office reported to the Board that it updated its website and created an office Manual of Procedures. In July, 2010 we have also implemented an information technology system, "Case Management by Client Profiles." This case management and document management system will support the School Board Attorney's Office in its efforts to increase productivity in its daily workflow that will ultimately lead to improved legal product, enhanced research capability and increased return on investment. This case and document manager will track case data more effectively as well as employees' time throughout the day.

In addition, in or around February 2010 fiscal year, the School Board Attorney's Office was audited for its activities and practices prior to the 2009-10 fiscal year. The Chief Auditor made a number of recommendations that were implemented:

1. Established expenditure controls and preapproval provisions for managing legal contracts with outside counsel.

The School Board Attorney established and implemented an internal legal services contract control system that will allow the School Board Attorney's Office to track the legal expenditures of all legal matters handled by outside counsel in a manner that is consistent with and complies with the terms of the legal services contracts. The School Board Attorney also substantially revised Outside Counsel Guidelines, which will encompass a more involved and proactive management of all pending legal matters, and require outside counsel to submit litigation budgets and plans. As a result, significant savings have been realized in legal expenditures.

2. Required outside firms to present a pre-litigation budget for the School Board Attorney's consideration and analysis.

The revised Outside Counsel Guidelines require that at the outset of all litigation or legal matters initiated by the District; a detailed review of the costs and benefits associated with the pursuit of such legal action will be performed. Periodic evaluations of the case or matter are conducted to ensure continued compliance with the scope and purpose of the representation.

3. Ensured that the School Board Attorney is kept informed, at some level, with all legal activity of the District.

The School Board Attorney's Office has undertaken a variety of steps and efforts to remain informed and engaged in all areas involving the District's legal representation, especially those areas that can significantly or directly impact the daily legal work that the Board has authorized and charged the School Board Attorney's Office with performing. The School Board Attorney's Office has engaged staff to become more responsive to their needs and has worked diligently to ensure that communications exist with the District staff overseeing specific areas that have a potential legal impact on the District. Such communication will serve to ensure that all services provided to the School Board are efficient, accurate and appropriate.

4. Shifted additional legal services in-house, and reduced the use of outside legal counsel.

The School Board Attorney's Office has commenced the process of further reducing reliance on outside counsel and has drastically increased the number of cases that are handled in-house in the areas of general liability, workers' compensation, employment discrimination and construction. In an attempt to further reduce expenditures on outside counsel and related fees and costs, the School Board Attorney has implemented various cost-saving measures, such as requiring proposed litigation budgets upon assignment of a case and through the implementation of rigorous contract management strategies applicable to outside counsel services.

5. Implemented more formal mechanisms to measure and quantify the productivity of staff attorneys and support staff.

The School Board Attorney's Office has procured a software program to track matters handled by its attorneys and staff. The School Board Attorney's Office is also working on improving the current information and management systems used to track the work and cases processed

by the office, including work that is routed to the office from different departments. With the Assistance of the Information Technology Department, the office's new case management and document management systems has assisted the School Board Attorney's Office in assessing the productivity of attorneys and staff.

6. Prepared this Annual Report to the School Board.

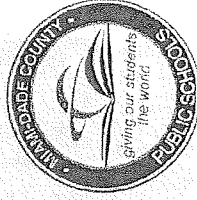
The School Board Attorney prepared this Annual Report for September 2010, to coincide with the one-year employment anniversary of the School Board Attorney. Attached are charts and graphs for the practice areas in the office summarizing cases handled by the School Board Attorney's Office as well as cases handled by outside counsel. The data on the attached reports regarding outside counsel was utilized, after several meetings, from data received by Gallagher Basset Services and other District offices.

7. Adequate Yearly Progress and Performance.

At the time of this report, in spite of the significant yearly progress and performance of the attorneys detailed in this report, the School Board Attorney will not request an adjustment in compensation for him or his attorneys at this time. Although the School Board Attorney's Office has not requested salary adjustments for its attorneys commensurate with increased productivity, the School Board Attorney's Office has implemented a number of systems that allow it to evaluate the productivity and adequate yearly progress associated with each attorney and the work that they perform during the course of the year. As circumstances permit in the future, the School Board Attorney will recommend compensation adjustments based on such adequate yearly progress.

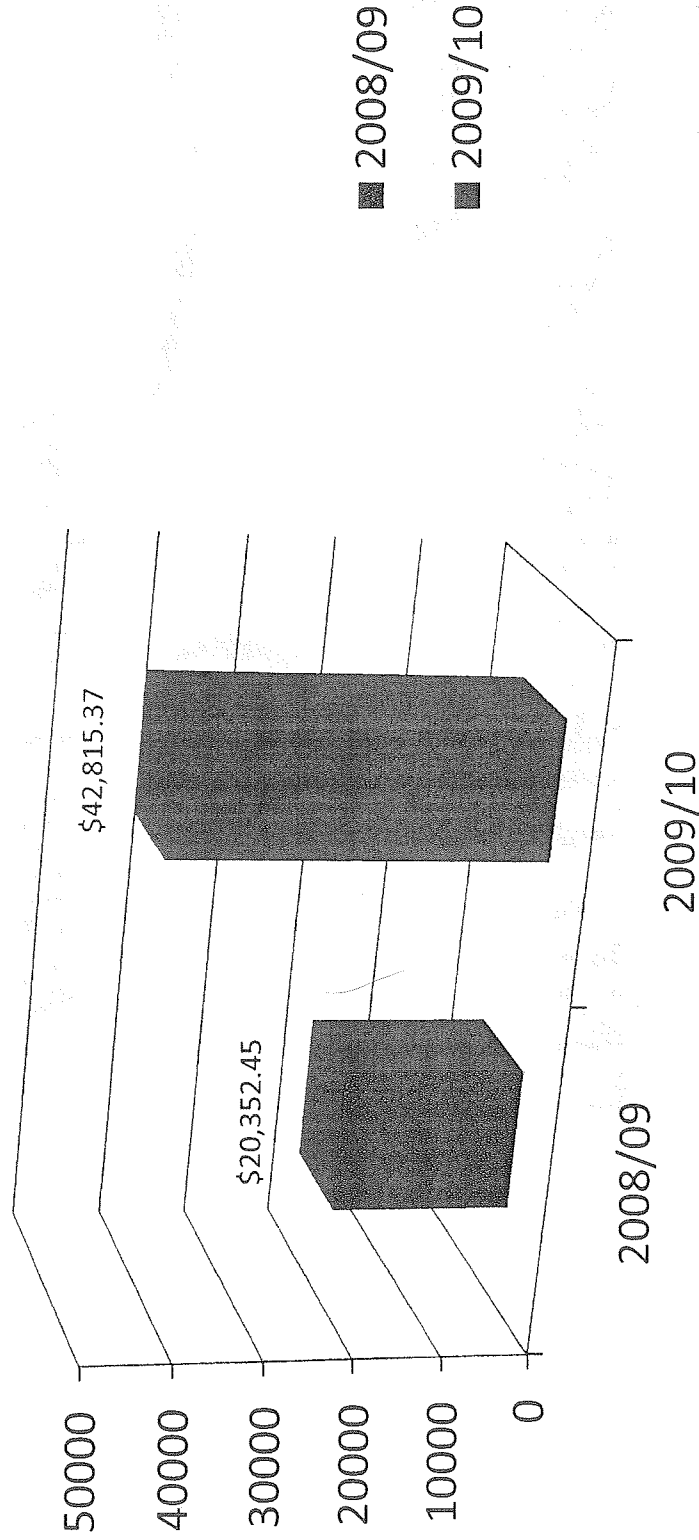
RECOMMENDED: That The School Board of Miami-Dade County, Florida accept the 2010 Annual Report of the School Board Attorney.

SCHOOL BOARD ATTORNEY END-OF-YEAR REPORT (2009-10)



Walter J. Harvey
School Board Attorney

Court Reporting Costs

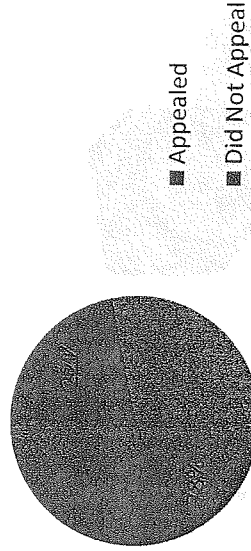


Increase of \$22,462.92 in court reporting fees due to an increase in legal activity is associated with contesting personnel and ESE claims

Strategic Framework –
Financial Efficiency/Stability

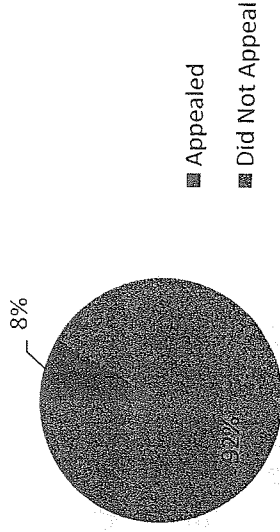
Personnel

Disciplinary Appeals
2008-2009



2008-2009	
Appealed	22%
Did Not Appeal	78%
Total	100%

Disciplinary Appeals
2009-2010



2009-2010	
Appealed	8%
Did Not Appeal	92%
Total	100%

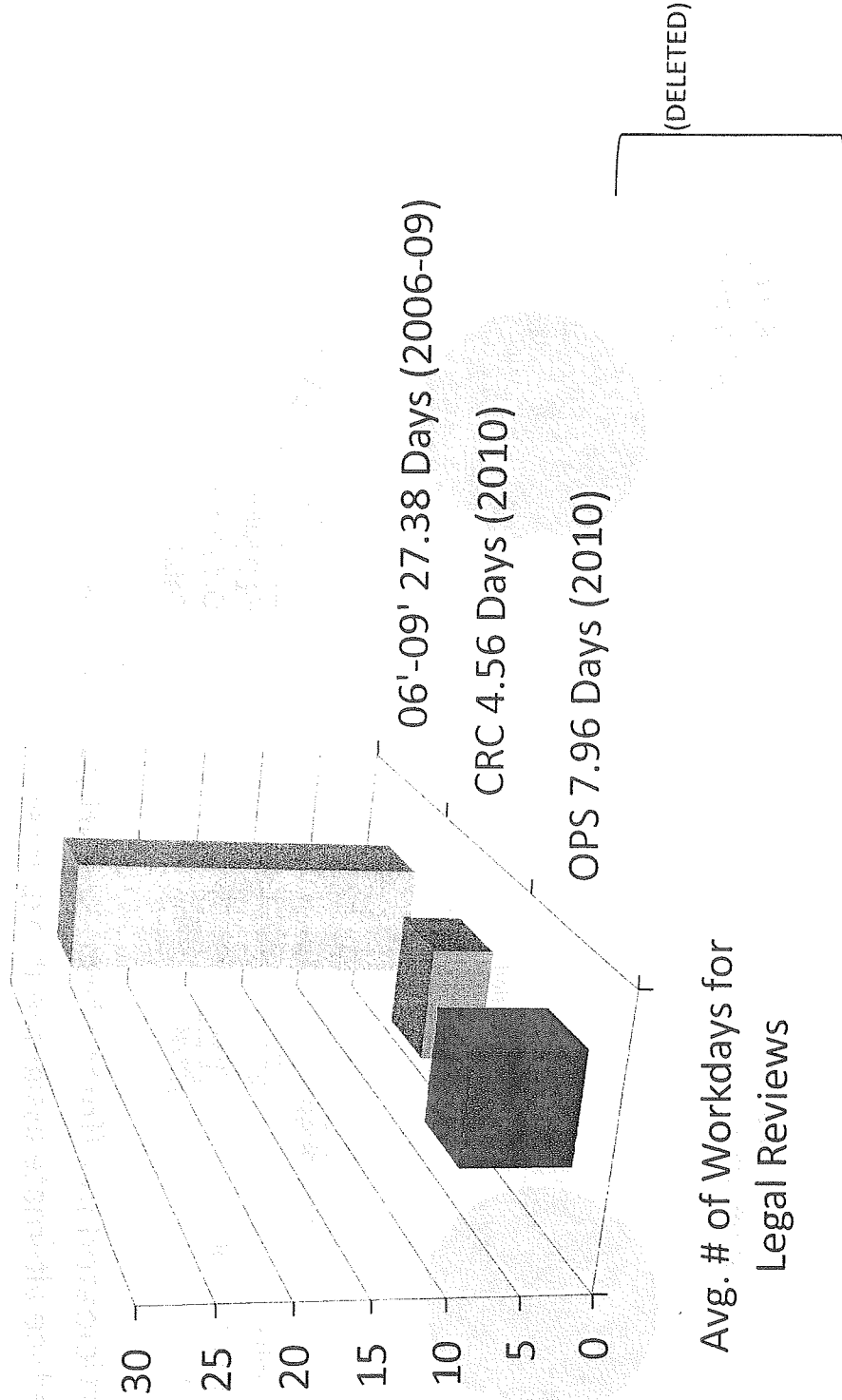
Participated in efforts of the Superintendent to:

- Reduce alternate assignment expenses
- Revise the PIM (Personnel Investigative Model)

Strategic Framework –
School District/Leadership

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Personnel



Avg. # of Workdays for
Legal Reviews

Strategic Framework –
Financial Efficiency/Stability

Academic/ESE

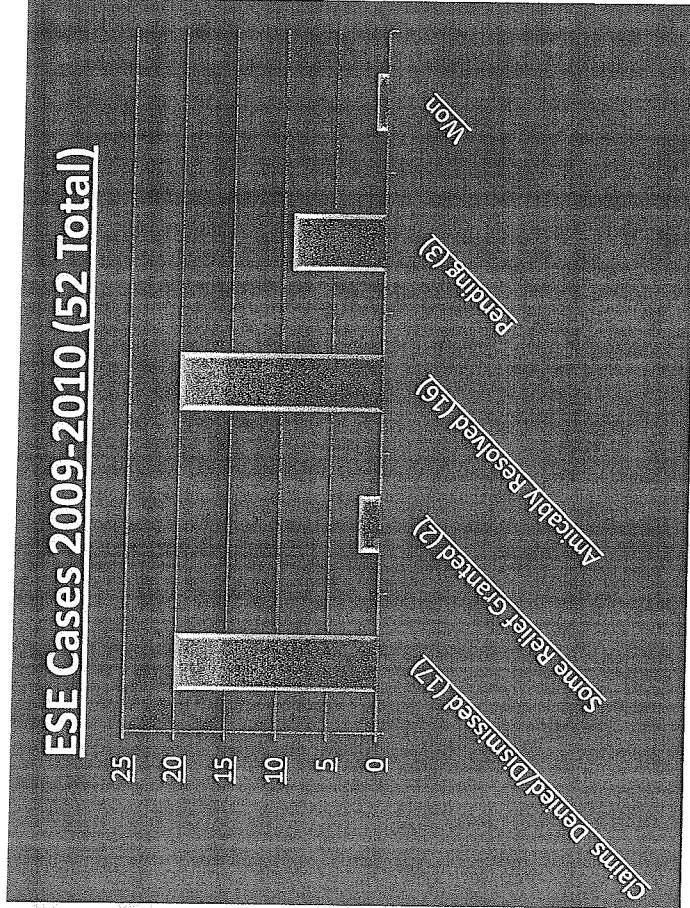
DIVISION OF SPECIAL EDUCATION & PSYCHOLOGICAL SERVICES

(REVISED)

I. ADVISORY ROLE

- Continuous advice on changes in the law, including federal and state regulations
- Updating Board Rules
- Trainings for district and school staff
- Advice on new electronic IEP system
- Legal review of responses to OCR Complaints
- Legal review of responses to state complaints
- Paradigm shift – advice on Response To Intervention
- Day-to-day advice and troubleshooting of various issues brought by special education lawyers and advocates

II. LITIGATION



Total Cases (2009-2010)

Academic -- ESE -- Charter Schools -- Expulsions

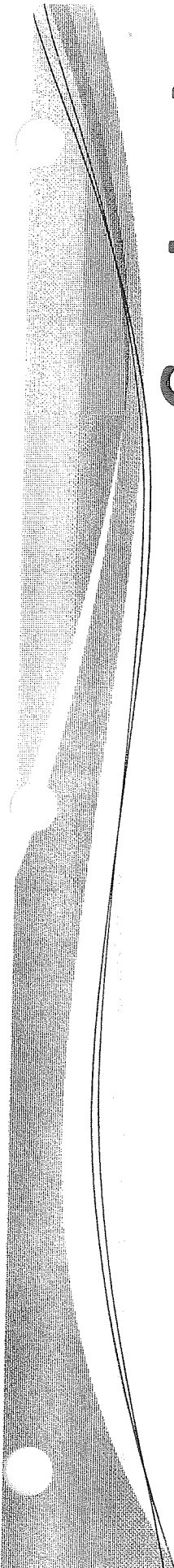
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Strategic Framework –
Financial Efficiency/Stability



Panels/Presentations

- American Bar Association – “Current Issues in Bilingual Education and English as a Second Language”
- FSBAA Presentations:
 - Proposed State Board Charter School Rule
 - Using the Notice of Insufficiency
 - Child Abuse Symposium
 - Student Discipline
 - ESE - Charter School Principals
 - Sunshine Law & Public Records
 - District Advisory Committees
- Employee Discipline Issues and Alternate Assignment with School Police and State Attorney



Contracts

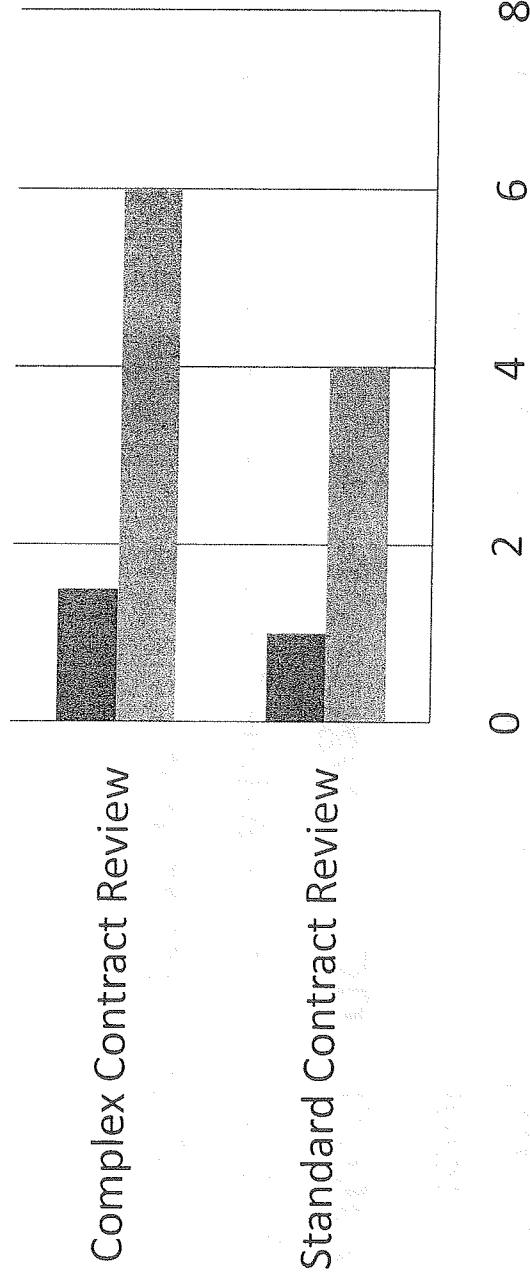
- George T. Baker – American Airlines Plane Donation
- I-Transit, Inc. - Transportation during 2010 Super Bowl & Pro Bowl
- KaBoom, Inc. - Playground
- Drafted - 1st ever Adult Education Community Based Organization Agreement

Total Contracts and Agreements Drafted and Reviewed (2009-2010)	1,997
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Strategic Framework –
School Support/Leadership

Contracts

Chart Title



	Standard Contract Review	Complex Contract Review
2009/10	1	1.5
2008/09	4	6

Strategic Framework –
Student, Parent and Community Engagement



Procurement

- Assisted Superintendent & HR Staff in the legal review of the FAQ's for vendor and employee awareness of regulations on Code of Ethics, Procurement, Anti Fraud/Anti Corruption, Code of Silence and Lobbying Policies.

Construction

FISCAL YEAR	# CASES FILED	TOTAL EXPENDITURE PER FISCAL YEAR
2004/2005	9	\$ 3,383,189.51
2005/2006	6	\$ 3,145,609.25
2006/2007	3	\$ 3,087,140.64
2007/2008	4	\$ 2,537,426.45
2008/2009	3	\$ 2,184,488.07
2009/2010	12*	\$ 929,323.91

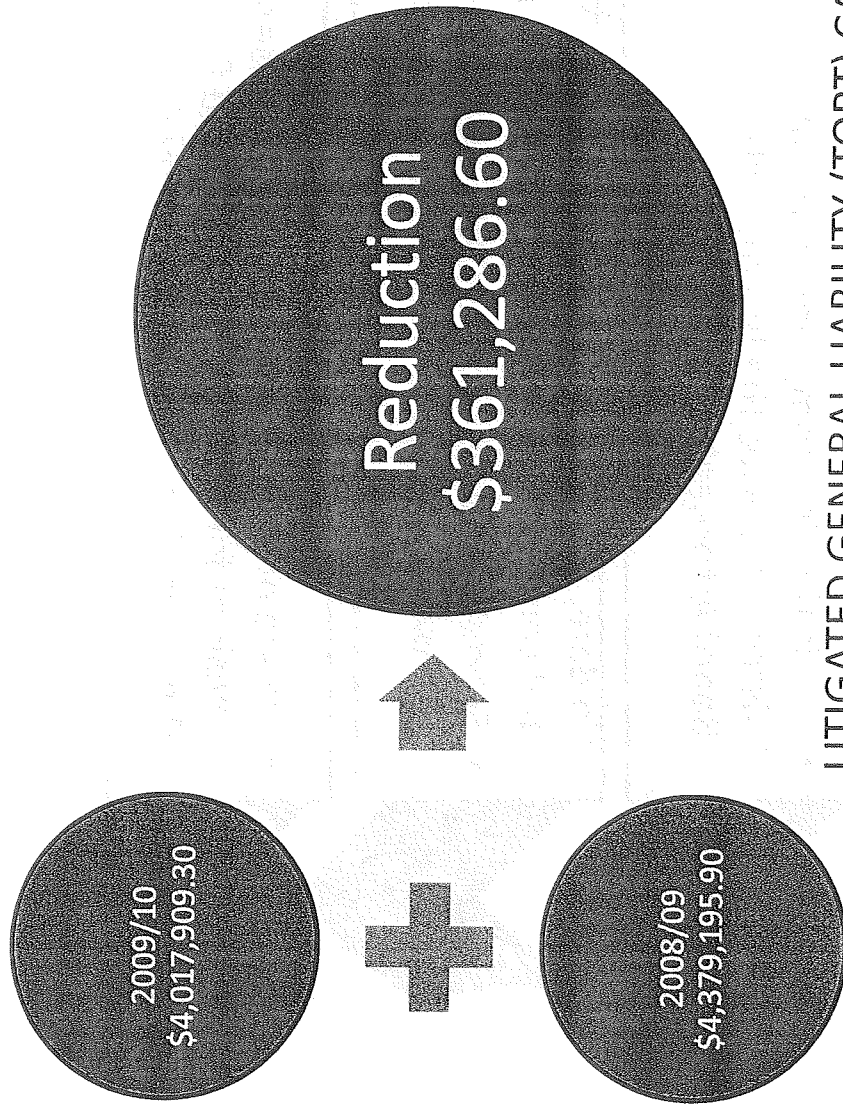
*2 Cases Re-Opened

Notes:

The Total Expenditure Per Fiscal Year includes attorney, mediation fees, consultants, testifying experts, testing and remediation and out-of-pocket expenses.

Strategic Framework –
Financial Efficiency/Stability

Workers' Compensation & General Liability



LITIGATED WORKERS' COMPENSATION CASES - 457

Strategic Framework –
Financial Efficiency/Stability

Rules Revision Project

- This is the first comprehensive Rule Revision for the District. Involves the Board, District Staff, and the Board Attorney's Office.
- To date, District staff and the attorneys have reviewed and completed first drafts of all Board rules.
 - School Board Attorney's Office dedicated approximately 2,011 attorney hours for the project.
- We are on schedule and ready to present the final revisions for 1st and 2nd reading and final adoption by the beginning of 2011 for approval.

Strategic Framework –
School/District Leadership