

Dr. Marta Pérez, Member

**SUBJECT: REQUEST THAT THE SCHOOL BOARD OF MIAMI-DADE COUNTY,
FLORIDA, TAKE ACTION ON THE BOARD ATTORNEY'S EMPLOYMENT
AGREEMENT**

COMMITTEE: BUSINESS AND FINANCIAL SERVICES

Each June, according to the provisions in the Board Attorney's employment agreement, the Board may evaluate the Board Attorney and, if desired, act upon that agreement. Since becoming a Board member, each year I have evaluated the Board Attorney in accordance with his employment agreement. Likewise, each June, prior to our meeting, I have given the Board Attorney an evaluation instrument for him to complete, and each year, the Board Attorney has refused to complete that evaluation form. Each of the last two years, after evaluating the Board Attorney, I publicly recommended, pursuant to his employment agreement, that the Board Attorney request to revert to the position of the highest rank and compensation of any Senior Assistant Board Attorney.

This June, pursuant to the employment agreement, I am again evaluating the Board Attorney and am recommending that the Board take action on his employment agreement to either terminate his employment with the Board or request that he revert to the position of the highest rank and compensation of any Senior Board Attorney. This recommendation is the result of a continuing evaluation by me that has found the Board Attorney's performance unsatisfactory in light of the Board's policy decisions and objectives.

The Board Attorney has failed to advise the Board of its legal options in crucial instances and has failed to keep the Board informed of legal matters critical to the Board in reaching sound business and policy decisions. Additionally, in an area of his expertise (real estate), last year the Board had to pay well over \$600,000 in back taxes and interest penalties associated with real estate transactions for which he was ultimately responsible; the Board Attorney failed to provide the Board with legal guidance as to the authority of the advisory board on land acquisitions until the Superintendent requested a written legal opinion. Also, the Board Attorney recently failed to furnish the Board with sound and consistent legal counsel in regard to the legal question of the Superintendent's authority over the internal auditors and the proposed new Audit Committee responsibilities. These are some examples of his continued unsatisfactory performance.

It should be noted that every Florida county School Board Attorney other than ours has a termination-at-will clause in his or her employment contract, and no other county School Board Attorney receives an automatic 8% raise every year regardless of performance as does our School Board Attorney. The School Board should demand competent representation from its legal counsel. Therefore, it is my recommendation that the School Board take action on the Board Attorney's employment agreement to terminate his employment for unsatisfactory performance. I do not recommend that he be given prescriptive goals and objectives to achieve during the next year because he was advised the last two years of his deficiencies by this Board member and his performance has not improved.

ACTION PROPOSED BY

DR. MARTA PÉREZ:

Request that The School Board of Miami-Dade County, Florida, take action on the Board Attorney's employment agreement as follows:

- 1) Discuss the Board Attorney's performance;
- 2) Determine by majority vote that the Board Attorney's performance is either satisfactory or unsatisfactory;
- 3) If the Board's determination is that the Board Attorney's performance is satisfactory, then take no further action on this item;
- 4) If the Board's determination is that the Board Attorney's performance is unsatisfactory, then in accordance with the Board Attorney's employment agreement, vote to terminate the Board Attorney or request that he accept the benefits set forth in paragraph IV of that agreement to continue his employment with the Board at the highest rank and level of compensation of any Senior Assistant School Board Attorney;
- 5) If the Board Attorney does not elect to accept the benefits set forth in paragraph IV of his employment agreement, then the Board should determine the effective date of his termination;
- 6) Finally, in accordance with the procedure for replacing the School Board Attorney adopted by the Board at the August 22, 2001 Board Meeting, the Board should either appoint the Deputy Board Attorney as the Interim Board Attorney or appoint a permanent Board Attorney upon the determined effective date of the Board Attorney's termination.