

Alberto M. Carvalho, Superintendent of Schools

**SUBJECT: AUTHORIZATION TO RETAIN LEGAL COUNSEL TO FILE
LAWSUIT AGAINST THE STATE OF FLORIDA AND ITS
APPROPRIATE DEPARTMENTAL UNITS TO RECOVER
FUNDS IMPROPERLY WITHHELD BY THE STATE**

**LINK TO DISTRICT
STRATEGIC PLAN: IMPROVE FINANCIAL SERVICES**

The Florida Education Finance Program ("FEFP") was created by the Florida Legislature in 1973 to provide a base level of educational resources for public school districts, primarily by redistributing funds from counties with a higher tax base per student to counties with a lower tax base per student. The FEFP funding formula starts with an estimate of the base "per-student" funding, then makes several adjustments to account for unique aspects of each school district. The FEFP requires that each school district make a "local effort," which amounts to the district's financial contribution to the program. The amount of the local contribution effort is determined pursuant to section 1011.62(4) and is based on tax revenues generated from the ad valorem value of property within the district. The balance of the revenue needed to operate the District represents the State's contribution under the FEFP.

The Florida Legislature amended section 1011.62(4), Florida Statutes, with an effective date of July 1, 2008. The Legislature gave no indication that the amendment would be applied retroactively so as to assign new significance to any calculations or certifications that might have occurred earlier in the calculation cycle. The retroactive application of this amendment adversely impacts this school district's already difficult financial situation.

Section 1011.71(2), Florida Statutes, generally allows a school district under specific circumstances to levy, in addition to the tax millage required for the local contribution to the FEFP, an additional 1.75 mills against taxable value for certain specified expenditures ("Capital Millage"). Prior to October 26, 2007, section 1011.71(3), Florida Statutes, included among the approved expenditures from Capital Millage revenues the cost of premiums for property and casualty insurance necessary to insure school district educational and ancillary plants. The statute afforded school districts the ability to pay for these premiums from the Capital Millage rather than from general operating funds, so long as the District met the specified statutory criteria. Thereafter, the Florida Legislature amended section 1011.71 in order to change the requirements for using Capital Millage revenues to pay for insurance premiums, and to impose a cap on such expenditures of \$25 per unweighted full-time equivalent student enrolled ("FTE").

GOOD CAUSE

A-3

This item is presented for the Board's consideration and seeks approval to initiate litigation against the State to have declared, among other things, the application of these amended statutory provisions as unconstitutional and enjoin the State's, its agencies' or departments' interpretation and retroactive application of sections 1011.62(4) and 1011.71, Florida Statutes, as amended. In addition this lawsuit would also seek to have section 1011.62(4), Florida Statutes, as amended, declared facially unconstitutional as violative of the State's paramount constitutional duty to fund a uniform system of public schools in an equitable and nondiscriminatory manner.

The effects of the State's unconstitutional interpretation and application of these statutes are that the School District of Miami-Dade County will be deprived of approximately \$24.7 million in operating revenues to which it would otherwise be entitled from the State, thus necessitating significant additional program cutbacks and layoffs of school district employees; and will be precluded from using capital millage to cover the entire \$34.06 million premium expense already incurred for property insurance.

Accordingly it is requested that the Board approve the commencement of litigation to seek recovery of the funds that have been withheld by the State due to unconstitutional application and interpretation of the aforementioned statutes. In addition, we request that the Board approve the retention of Mr. Edward Guedes, Esquire, a shareholder, from the firm of Greenberg Traurig, LLP, as outside legal counsel to represent the Board in this matter. Mr. Guedes has extensive experience representing governmental entities, including school districts for over fourteen (14) years. A copy of Mr. Guedes' resume is attached. The estimated cost of this litigation under a proposed fee structure, through the first and second phase of litigation (pleading through pre-trial discovery) will be up to \$150,000. These costs will be funded through the District's Risk Management Loss Fund.

This item does not appear on the published Agenda. There is good cause to vary from the Agenda as the District's severe financial situation will be adversely impacted if there is any further delay in the recovery of the funds being withheld by the State.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, authorize the Superintendent to:

- a) initiate litigation against the State of Florida for the reasons specified herein; and
- b) approve retention of Mr. Edward Guedes, shareholder with the firm of Greenberg-Traurig, LLP, to represent the School Board as its legal counsel in this litigation. Mr. Guedes will be compensated at the discounted rate of \$400.00 per hour; his senior associate will be compensated at \$295.00 per hour, and junior associates and paralegals from his firm, will be paid an hourly fee ranging from \$171 to \$225 per hour, for a total amount not to exceed \$150,000.



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Edward Guedes has concentrated his practice in the areas of appellate litigation, employment and labor law and land use law, and is Board Certified by The Florida Bar in the field of Appellate Practice. Edward also has extensive experience with the implementation and application of the American with Disabilities Act and Family and Medical Leave Act. Edward lectures frequently to local governmental employers and other attorneys in the fields of appeals and litigation support and employment and labor matters.

In addition to his legal experience, Edward has worked with the Greater Miami Chamber of Commerce and various non-profit cultural organizations in Miami including serving on the Board of Trustees for Business Volunteers for the Arts participating in the Chamber's Drug Free Workplace Committee, and serving as Co-Chairman of the Cultural diversity in the Arts Subcommittee of the Cultural Action Committee of the Chamber. Edward was appointed by the Dade County Board of Commissioners to serve on the Miami-Dade County Independent Review Panel which he chaired from 1997 until 2000. He also served as Vice President of the Miami Beach Hispanic Community Center, where he sat on the Board of Directors.

Most recently, Edward was appointed to serve as co-chairperson of the committee responsible for commemorating the 50th Anniversary Celebration of Florida's Third District Court of Appeal in 2007.

Areas of Concentration

- Appellate law
 - Appeals
 - Litigation support
- Employment and labor law
- Land Use Law
 - Judicial review of local governmental approvals/denials

Significant Representations

- Successfully defended at trial and through appeal to the Eleventh Circuit Court of Appeals a municipal charter provision setting forth an oath of office for elected officials. The oath was challenged on First Amendment grounds because it required the office holder to swear or affirm to support the constitutions and governments of the United States and the State of Florida.
- Successfully litigated on behalf of state and local governmental entities interpretation of vested rights statute conferring development rights on owners of more than 12,000 residential lots in the Florida Keys and affecting all Areas of Critical State Concern throughout the State of Florida.
- Successfully litigated and defended on appeal multi-million dollar class action lawsuit for unpaid overtime wages under the Fair Labor Standards Act.
Upheld multi-million dollar ad valorem tax exemption for municipal marina competing with privately owned marinas.
- Successfully defended against constitutional challenge authority of local governmental entity to regulate and restrict ownership of animals within community.
- Successfully asserted a constitutional challenge to a municipal ordinance precluding private country club from

fencing its property over the objections of surrounding neighbors who asserted an historical right to a view onto and across the club property.

- Successfully overturned on appeal denial of development approval for 300 unit trailer park in South Miami-Dade County.
- Extensive experience defending against civil rights claims asserted under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Family and Medical Leave Act, the Fair Labor Standards Act and the Florida Civil Rights Act of 1992.

Professional & Community Involvement

- The Florida Bar
 - Board Certified in Appellate Practice
 - Appellate Court Rules Committee
 - ACRC Civil Rules Subcommittee, Chairman 2005-06
 - ACRC Amicus Curiae Subcommittee, Chairman, 2004-05; Vice Chairman, 2003-04
- Dade County Bar Association
 - Appellate Court Committee, Chairman, 2003-04; Vice Chairman, 2002-03
- Cuban American Bar Association
- Third District Court of Appeal 50th Anniversary Committee, Co-Chair, 2004-2007
- American Bar Association
- Appellate Judges Conference - Council of Appellate Lawyers
- Defense Research Institute
- Federal Bar Association, South Fla. Chapter

Awards & Recognition

- Listed, *Best Lawyers in America*, 2008-2009
- Selected, "Florida Legal Elite," *Florida Trend* magazine, 2007
- Selected by *Super Lawyers* magazine, 2006, 2007 and 2008
- Recognized as the "Best of the Bar," *The South Florida Business Journal*, 2003

Articles, Publications & Lectures

Articles

- Author, "En Banc Eleventh Circuit Vindicates Fairness of Cuban Spies' Trial in Miami," *CABA Briefs*, Cuban American Bar Association, Fall 2006
- Author, "Is There Light at the End of the Quasi-judicial Tunnel?," *The Florida Bar Journal*, Vol. XXVII, No. 1, November 2003
- "Don't Ask, Don't Tell...At Work or in Court - The Conflict Between the Supreme Court's Decision in *Oncale* and Price Waterhouse," *The Labor Lawyer*, American Bar Association, Vol. 18, No. 3, Winter/Spring 2003
- "The Proverbial 'Get out of Jail Free Card' - The Ninth Circuit's Treatment of Addiction Under *Hernandez v. Hughes Missile Systems Co.*," *Florida Bar Journal*, Vol. LXXVI, No. 11, December 2002
- Co-Author, "Open the Window and Let Some Fresh Air In: The Window of Correction After *Davis v. City of Hollywood*," *Stetson Law Review*, Vol. XXIX, No. 3, Winter 2000
- "Smith v. Midland Brake, Inc. - Writing Affirmative Action Into the American with Disabilities Act?," *Florida Bar Journal*, Vol. LXXIII, No. 9, October 1999

Lectures

- Participant, "Balancing Judicial Independence and Accountability," 2007 Florida Appellate Justice Conference
- Presenter, "The Limits of Quasi-Judicial Actions: Whatever Happened to Ministerial Acts?," Zoning and Land Use in Florida Seminar conducted by Lorman Education Services, Miami, Florida, August 27, 2004
- Panelist, "Issues in Development Review Processing: A Case Study of Unincorporated Miami-Dade County," Zoning and Land Use in Florida Seminar conducted by Lorman Education Services, Miami, Florida, August 27, 2004

Speeches

- Speaker, "The Opinion is Out . . . Now What?," Florida Bar Young Lawyers Section seminar, Miami, Florida, October 26, 2006

Miscellaneous

- Interviewed, "Foro 17," a Spanish-language talk show in South Florida, WLRN, public television station, on the topic of the Cuban Spy case, March 31, 2006

Education

J.D., Harvard Law School, 1988

B.A., *magna cum laude*, Amherst College, 1985

- John Woodruff Simpson Fellowship for the Study of Law

Admitted to Practice

- Florida
- U.S. Court of Appeals, Eleventh Circuit
- U.S. District Court for the Southern District of Florida
- Supreme Court of the United States

Languages

- French, Conversational
- Italian
- Spanish

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