

Office of Superintendent of Schools
Board Meeting of August 3, 2011

July 28, 2011

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

SUBJECT: 2010-2011 ANNUAL REPORT TO THE BOARD

COMMITTEE: SCHOOL SUPPORT ACCOUNTABILITY

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

The Board Attorney's office presents this annual report to inform the School Board of the highlights, progress and activities of the Board Attorney's office. At the School Board meeting of October 14, 2009, the School Board approved restructuring the Board Attorney's office to more adequately address the District's present and projected long-term legal needs, eliminate operational redundancies and misalignment of resources, and improve efficiency.

The School Board Attorney's office submitted its first yearly report to the Board at the December 15, 2010 School Board meeting, highlighting the resolution of outstanding litigation and other disputes, particularly in the area of construction where, for the first time in more than a decade, fees for outsourcing legal services were under \$1 million dollars. The report also referenced the audit of the Board Attorney's office prior to the 2009-2010 fiscal year, and the implementation of new office procedures by the Board Attorney.

At the School Board meeting of April 13, 2011, the School Board attorney informed the Board through its Quarterly Report of its continuing proactive activities, emphasizing successes in the personnel/employment division and substantial reduction in outsourcing of legal services.

REVISED

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HIGHLIGHTS 2010-2011

School/District Leadership

Professional Development

When the Board appointed the Board Attorney, the Board emphasized the need to develop the professional skills of the office. In addition, the Board emphasized that the field of education is changing, and that the District's education delivery models are also changing. In an era of increased accountability and dwindling resources, the Board and Superintendent have employed reform-minded professionals and developed innovative educational models like I-Prep, MAST, virtual schools and other schools of choice. This environment requires in-house, on-call legal specialists with a range of expertise from a variety of legal backgrounds in corporate transactions, real estate, construction, labor and employment, copyright and intellectual property. The Board Attorney's office restructuring and professional development opportunities have enabled it to deliver specialized legal services in these areas more expeditiously, efficiently, inexpensively and appropriately.

Rule Revision Project

The comprehensive Rule Revision Project, representing the first time the rules have been revised since 1974, was approved by the Board at its meeting of April 14, 2010, and has been accomplished ahead of schedule and below budget. District staff and the School Board Attorney's office committed to a timeline, and the entire set of revised Board Policies (Rules) became effective July 1, 2011. The consultants who assisted the District commented that the workshops and meetings progressed in an extraordinary manner, such as they had never witnessed in their work with hundreds of school districts around the country. The Board's Policies are now updated, modernized and current. In the upcoming year, the School Board Attorney's office and District staff will undertake a comprehensive review and revision of District handbooks and manuals that will then be hyperlinked to the new policies on the District's website.

District Office Collaboration

With the support and under the direction of the School Board, the School Board Attorney's office has established itself as an in-house, on-call operation for District offices and schools. The strong collaboration between Schools Police and the School Board Attorney's office has resulted in a nearly completed proposed metal detector policy that, if approved by the Board, will shield the District from liability while improving student safety. Similarly, the Board Attorney's office is collaborating with the Transportation Department to develop a comprehensive plan and procedure to protect the Board from fines resulting from red light cameras.

Financial Efficiency and Stability

Personnel and Employment

This area continues to improve. The time expended for legal reviews of disciplinary and civil rights compliance files has dropped dramatically over the last two (2) years. This area has posted fifteen (15) recent victories and has prevailed in nine (9) consecutive disciplinary cases before the Division of Administrative Hearings. These matters were handled in house, no legal services were outsourced and there were minimal costs to the District.

Worker's Compensation

The Board Attorney's office continues to handle complex and large financial exposure claims, thus reducing the outsourcing of legal services in an area that carries high potential exposure for the District. The Assistant Board Attorney responsible for workers' compensation matters also actively monitors claims to ensure timely and cost effective resolution. In addition, the Board Attorney's office has worked with Risk Management to address compliance issues associated with new federal regulations impacting worker's compensation. } REVISED

The overall District cost for workers' compensation dropped for the second consecutive year. For fiscal year 2010-2011, legal fees also decreased by \$239,050.00. This reflects a continued downward trend in the amount of workers' compensation attorneys' fees paid to outside defense counsel as evidenced by comparison to the \$2,816,444 paid during fiscal year 2009-2010 and \$2,931,891 paid during fiscal year 2008-2009. } REVISED

Tort Litigation

The School Board Attorney's office continues to reduce outsourcing legal services and has doubled the number of tort cases handled in-house.

The office has transitioned from a team of attorneys that oversee outsourced legal services to a team that competently handles its own legal matters. More in-house attorneys are handling tort cases to develop their skills and enable the office to use its available resources more efficiently.

In fact, in-house counsel has litigated all tort cases filed against the School Board this year. As a result, the outsourcing of legal services in tort litigation is trending downward substantially. Moreover, the oversight and efficiency of tort cases handled by outside counsel has significantly improved, as has the number of cases being closed by outside counsel, resulting in substantial savings to the District.

Construction

The School Board Attorney's office continues to represent the School Board in the areas of construction and other litigation matters, and to provide legal advice and risk avoidance training to District staff. The School Board Attorney's office and Facilities

office have collaborated to track expenditures for all invoices, monitor legal reserves, attend ARG and TRC meetings, process and complete numerous public records requests, assist with subpoenas and depositions of staff, respond to Superintendent Referrals, review proposed legislation related to construction and professional services procured by the District, review and revise existing contracts related to construction and professional services and research contractor prequalification.

During the 2010-2011 fiscal year, the School Board Attorney's office assisted in the recovery of \$1,535,654.00 through settlement of various construction litigation matters, which is the highest total annual recovery on record for the District. In addition, from July 2010 through June 2011, the total of \$693,698.35 for outside legal fees is the lowest in the recorded history of the District (District financial records only record the last two decades). The second lowest, \$920,159.24, was in the prior year (2009-10). The past two fiscal years are the first time since the District has kept records on this subject that annual construction expenditures have been less than \$1,000,000.00.

Student, Parent and Community Engagement

The Board Attorney's office continues to defend the Board in special education, due process cases, student disability discrimination, charter school appeals, and student expulsions. The Board Attorney's office also advises District staff on a regular basis in the areas of Academic Programs, Exceptional Student Education (ESE), and Student Rights. The Assistant Board Attorneys have reviewed the aviation contracts for the donation and transfer of two (2) airplanes at the Baker Aviation School. In addition, the Board Attorney's office updated many form agreements, including charter schools and professional services. The Board Attorney's office assisted in providing legal services to support the establishment of a new career technical program with a community business partner. The attorneys also worked with District Staff and the US Coast Guard to substantially update and amend the MOU governing the JROTC program at MAST Academy.

The office continues to assist District staff in response to numerous federal and state complaints and changes to federal and state laws and regulations, including recommending required policy updates; and in providing various trainings, including to Assistant Principals on the role of the Local Educational Agency (LEA) in special education. Among other highlights, we provided critical information to a local agency partner in a fact-finding investigation for the purpose of improving agency practices for the safety of children. We continue to work with agency partners to identify and implement efficient and legally compliant information sharing for the overall well-being of the students of Miami-Dade County.

RECOMMENDED: That The School Board of Miami-Dade County, Florida accept the 2010-2011 Annual Report of the School Board Attorney.

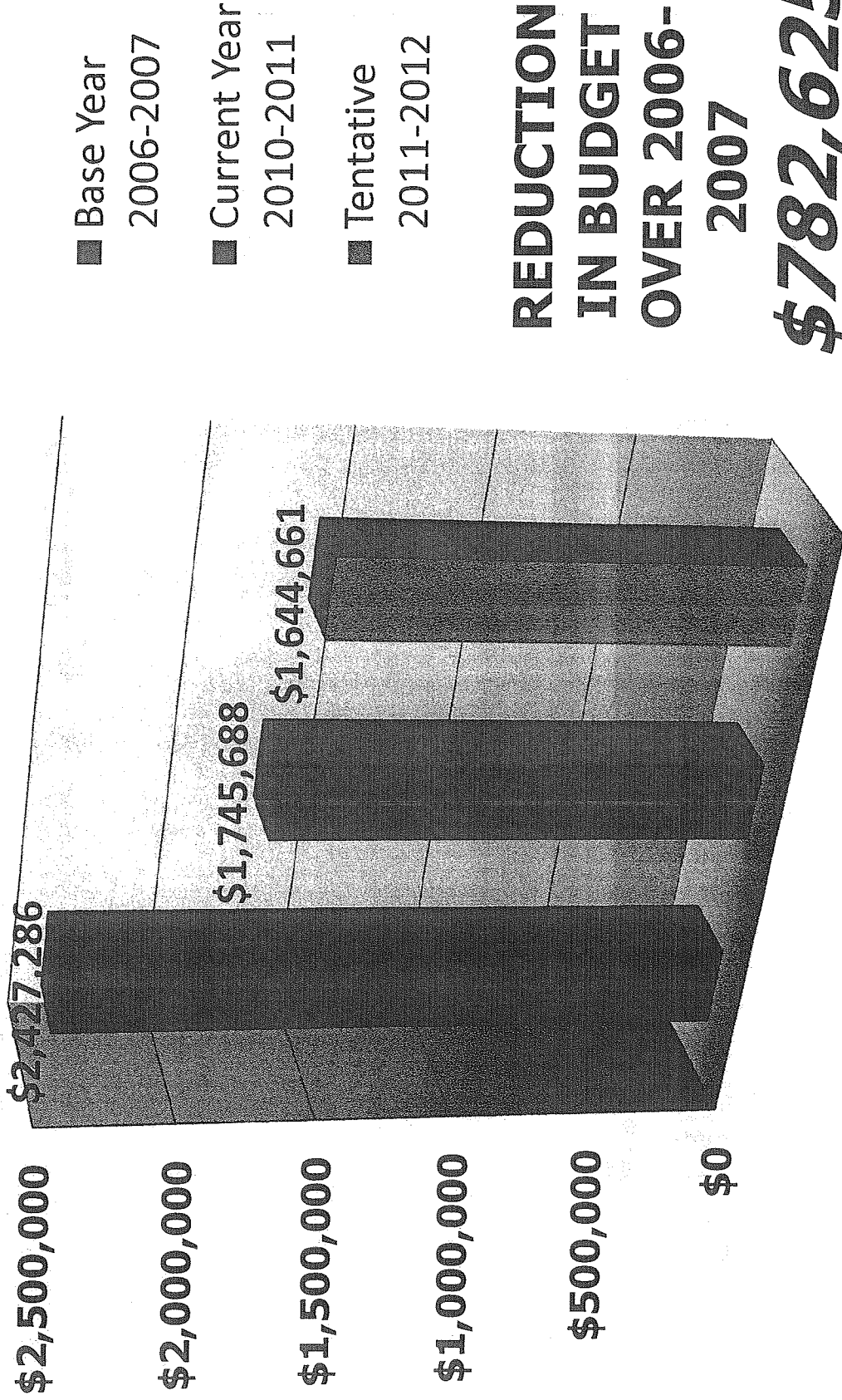
SCHOOL BOARD ATTORNEY END-OF-YEAR REPORT (2010-2011)



**Walter J. Harvey
School Board Attorney**

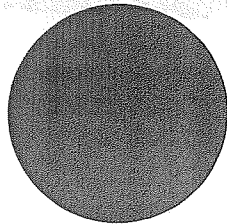
SCHOOL BOARD'S ATTORNEY OFFICE BUDGET

BUDGET ANALYSIS



Personnel

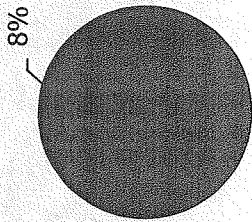
Disciplinary Appeals 2008-2009



■ Appealed
■ Did Not Appeal

2008-2009		
Appealed	22%	15
Did Not Appeal	78%	54
Total	100%	69

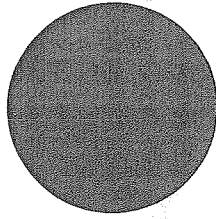
Disciplinary Appeals 2009-2010



■ Appealed
■ Did Not Appeal

2009-2010		
Appealed	8%	7
Did Not Appeal	92%	77
Total	100%	84

Disciplinary Appeals 2010-2011



■ Appealed
■ Did Not Appeal

2010-2011		
Appealed	26%	18
Did Not Appeal	74%	50
Total	100%	68

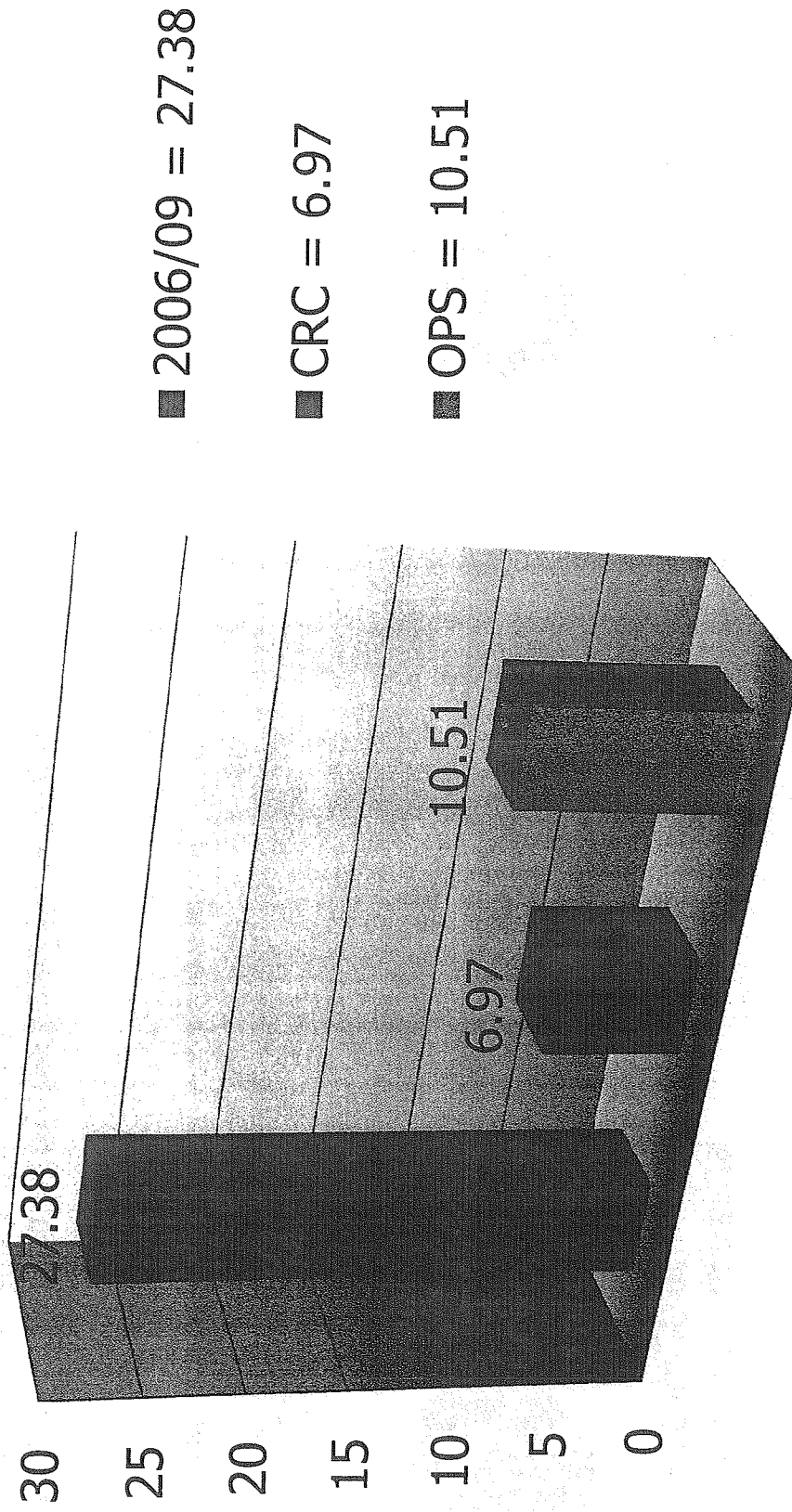
Participated in efforts of the Superintendent to:

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

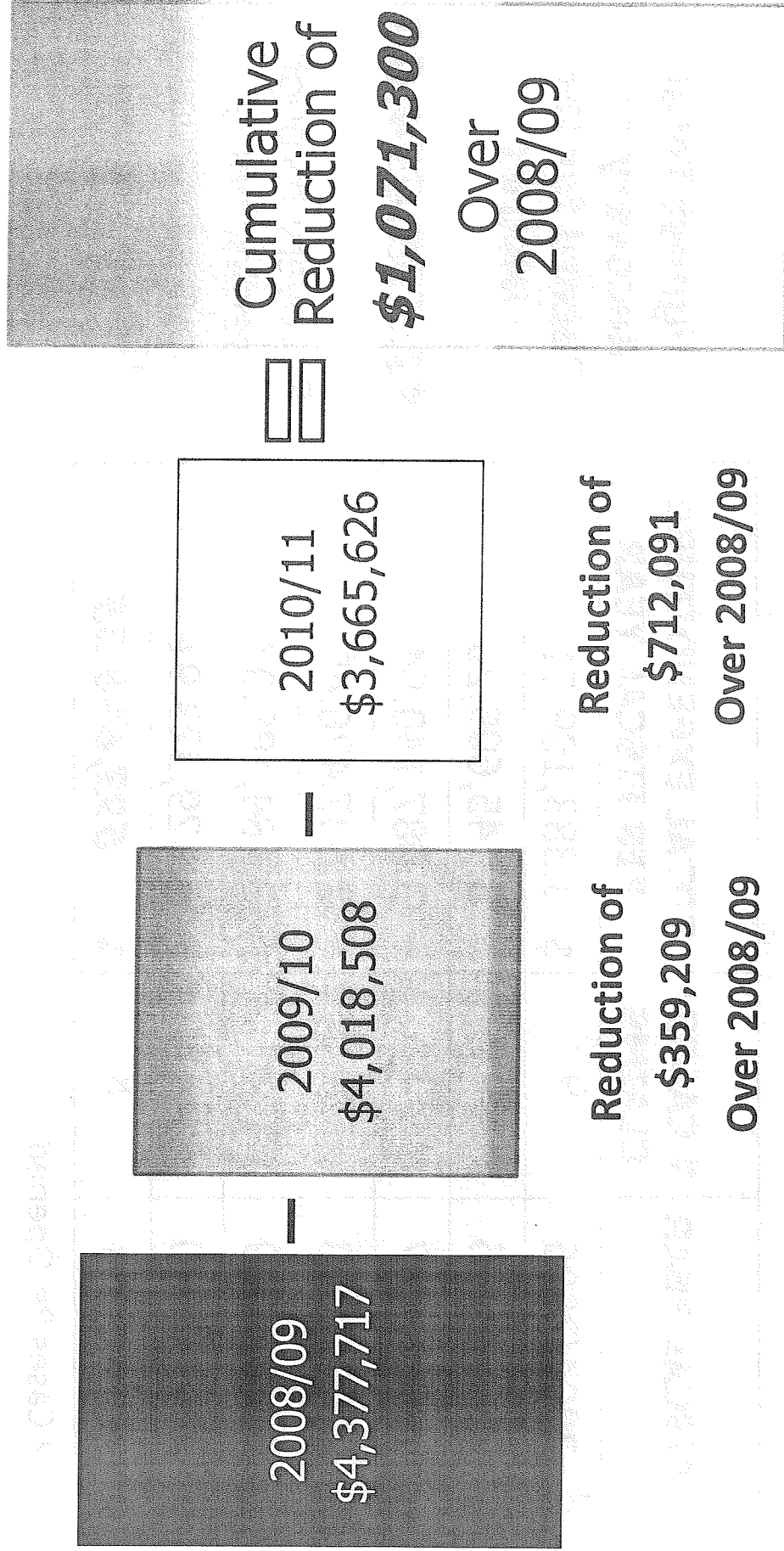
Strategic Framework –
School District/Leadership

Personnel

Avg. # of Workdays for Legal Reviews



Attorney's Fees Workers' Compensation & General Liability



Strategic Framework –
Financial Efficiency/Stability

Construction

FISCAL YEAR	# CASES/ CLAIMS	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
2010/2011	8	\$ 693,698.35

Highest Total
Recovery on
Record for the
District

\$1,535,654.00

Recovery through
settlement of
various construction
litigation matters

*2 Cases Re-Opened

Note:

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

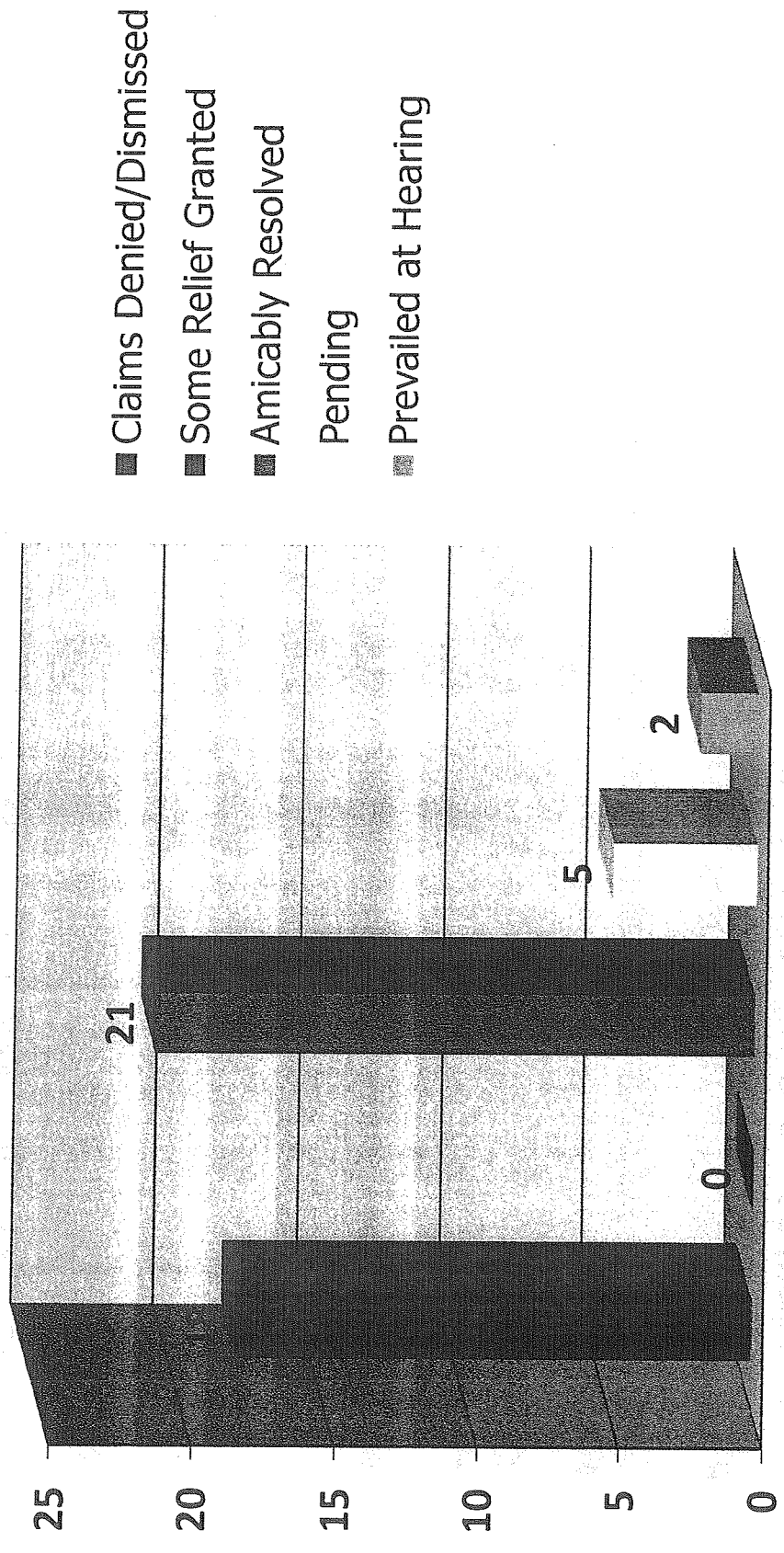
Academic/ESE/Student Issues

HIGHLIGHTS

- 46 total ESE, 504, and Expulsion Cases
- Reduction in number DOAH cases due to greater success in securing dismissals
- Continued participation in community forum on improvements to DCF/Child Abuse Reporting systems
- Continuous advice on changes in the law, including federal and state regulations
- Updated All Student-Centered Policies
- ESE Training for Assistant Principals/ Florida School Board Attorneys Association
- Preparation of witnesses for increased presence and interviews by the federal Office for Civil Rights
- Review of Adult Code of Conduct
- Assisted in establishing a New Career Technical Program with a Community Business Partner

Strategic Framework –
Financial Efficiency/Stability

Academic/ESE/Student Issues



Procurement

HIGHLIGHTS

- Assisted Superintendent & HR Staff in the legal review of the **FAQ's for vendor and employee awareness** of regulations on Business Code of Ethics, Procurement, Anti Fraud/Anti Corruption, and Minority/Women's Business Enterprise Policies.
- iTransit, Inc. – **\$158,529.60 full recovery** to District after filing 3-count complaint in Dade County Circuit Court for breach of contract, etc. in connection with service contract for provision of transportation to events and activities related to the 2010 Super Bowl and 2010 Pro Bowl.
- Double R Vending – **\$20,000 recovery** to the District upon settlement of claim resulting from contract between the parties pursuant to Bid #092-JJ03.
- Consulted with Procurement and Risk Management in the development of a **collaboration site for insurance** required of contractors doing business with the District
- Successfully resolved the following **Bid Protests**:
 - Bagel Express
 - Outrageous Bagel
 - Downtown Towing

Strategic Framework –

Student, Parent and Community Engagement

Contracts

HIGHLIGHTS

- George T. Baker – American Airlines and Freeman Leasing Plane Donations
- Efficiency Energy, LLC – Monetization EPACT
- Miami Heat- Dunbar Elementary Learn & Play Center
- MAST Academy – U.S. Coast Guard ROTC
- T-Mobile – Master Corporate Services
- McGladrey & Pullen, LLC – Outside Auditors
- Braman Automotive Technician Training – Lindsey Hopkins Technical Education Center
- Miami Dade College – Adult Education Career Pathways/Transition to Post-Secondary Education
- Microsoft, HP and Dell – Technology Agreements
- SES Providers Form Contract – Complete Redraft
- Drafted – 1st ever Adult Education Community Based Organization Agreement

Strategic Framework –
Financial Efficiency/Stability

Contracts

HIGHLIGHTS

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REAL ESTATE

- Miami Skills Center – from RFP, Purchase Agreement through Closing
- Bus Depot Property– Settlement Agreement through Closing

INTERLOCAL AGREEMENTS

- City of Miami Beach– Prairie Avenue Improvements
- City of North Miami– Construction of Gymnasium
- City of Doral – Doral Address Verification Plan
- City of Coral Gables – West Lab Elementary Sewer Connection
- Concurrency Management

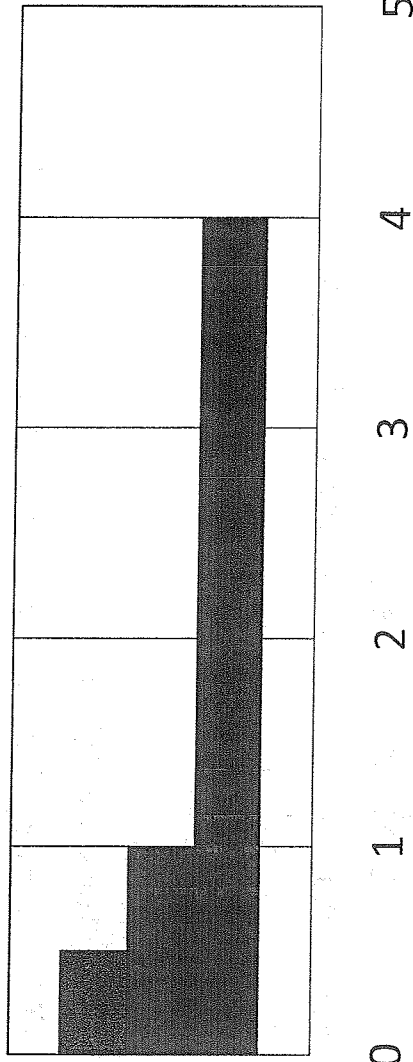
LAND USE

- International Studies Preparatory Academy
- State School T-1 – Site Development and Contract Compliance, which included monitoring Permitting, Platting, Public Hearings, etc.

Strategic Framework –
Financial Efficiency/Stability

Contracts

Contract Review Time (in Days)



Standard Contract Review

	Standard Contract Review
■ 2010/11	0.5
■ 2009/10	1
■ 2008/09	4

Total Contracts and Agreements Drafted and Reviewed (2010-2011)	1,296
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Panels/Presentations

BAR ASSOCIATIONS

- American Bar Association Public Sector Lawyer Panel at Florida International University (Panelist) February 8, 2011
- Using the Notice of Insufficiency, November 2010, Florida School Board Attorneys Association (Tampa, FL)
- American Bar Association Law Student Division Fall Leadership Summit at University of Miami (Panelist) October 23, 2010
- American Bar Association – “Current Issues in Bilingual Education and English as a Second Language”
- FSBAA Proposed State Board Charter School Rule
- FSBAA Using the Notice of Insufficiency

Strategic Framework –
Education

Panels/Presentations

DISTRICT STAFF/TRAINING

- Handling Special Education Complaints, June 2011
- Manifestation Determination Compliance, Summer 2010
- Legal Issues in Discipline of Special Education Students, August 2010
- Minority Business Enterprise Workshop (Presentation on School Board Rules related to Conflict of Interest/Code of Ethics/Lobbyists Rules)
- Student Discipline
- ESE - Charter School Principals
- Sunshine Law & Public Records

Panels/Presentations

COMMUNITY AT LARGE

- 1st Annual Black History program
- Hispanic Heritage (upcoming)
- Child Abuse Symposium
- District Advisory Committees
- Employee Discipline Issues and Alternate Assignment with School Police and State Attorney

PROFESSIONAL DEVELOPMENT TRAININGS

- Chief Judge Cohen – DOAH matters
- Ron Bernstein, Esq. – Trail Preparation
- Judge Gerardo Castello – A Nuts & Bolts Perspective
- Florida School Board Attorney’s Association (FSBAA)
Conferences

Continuing Legal Education (CLE) credits were offered to the attending attorneys as part of the professional development requirement.



PANELS

- Federal Magistrate Judge Merit Selection Panel, United States Federal District Court, Southern District of Florida (July 2011)
- Broward County School Board Attorney Merit Selection Panel