

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

**SUBJECT: QUARTERLY REPORT TO THE BOARD**

**COMMITTEE: INNOVATION, EFFICIENCY AND GOVERNMENTAL RELATIONS**

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

The School Board, at its meeting of October 14, 2009, approved an overall restructuring of the School Board Attorney's Office ("SBAO") to align to the District's present and projected long term legal needs. Since that time, the Board Attorney has presented several quarterly and annual reports summarizing and highlighting important legal developments and the overall performance of the office.

This quarterly report is being provided to keep the Board apprised of the important work completed this fiscal year and to update the Board on the continuing progress of projects initiated by the Board Attorney, along with an overview of significant cases and matters handled by the School Board Attorney's Office.

### **OVERVIEW**

The 2010-2011 fiscal year was a turning point in the provision of legal services to Miami-Dade County Public Schools. The SBAO continued its transformation in both form and substance, dramatically shifting its culture to a renewed emphasis on professional development and serving our clients and their specific needs.

Since the beginning of this fiscal year, the SBAO has implemented a document management database for tracking and storing its referrals and assessing the overall workload of the office. According to the data collected, the SBAO has a substantially higher workload, has become more responsive to administrative requests and has streamlined its functioning in an effort to increase its work volume and effectiveness. The SBAO has more than doubled its caseload in many areas while significantly reducing its costs so that more School Board resources can be devoted to the District's core function of educating children.

Several attorneys and professionals have been assigned to work directly with Cabinet level administrators and departments. Newly hired attorneys and staff combined with the current employees are a dynamic legal team that continues to transform the manner in which legal services are delivered.

As the District moves forward to meet certain anticipated legal challenges in the future, the SBAO will continue to provide competent and specialized legal services that will assist the School Board and District staff in carrying out their duties and responsibilities.

### **HIGHLIGHTS**

By developing a highly competent and specialized team of legal advisors, the SBAO continues to consistently reach unprecedented records in the history of the District and among legal offices in the state and in the nation as a whole. The data clearly shows that since the School Board hired its specialized legal team, the SBAO has provided two to three times more legal services in many areas while reducing the outsourcing of legal services to record lows.

The cost savings has been several million dollars annually. In addition, the SBAO continues to work with District staff to revise and update its forms, policies and procedures. The SBAO supports the mission of the School Board and the Superintendent in their innovative approaches to delivering services and has issued important opinions and assisted in negotiating landmark agreements, such as those for district-managed charter schools. The SBAO's opinions regarding district-managed charter schools were recently confirmed by the Florida Commission on Ethics.

### **PILLARS**

#### **STUDENT, PARENT AND COMMUNITY ENGAGEMENT**

The SBAO has revised its mission statement based on those of similar successful education law offices:

***We are a dedicated team of legal advisors and professional staff committed to serving our clients by facilitating creative, collaborative solutions. We offer high quality advice to help our clients incorporate relevant legal principles into their daily decision making and further the School Board's goals and initiatives. We counsel the Board, the Superintendent, Senior Staff and other designated employees on legal and risk management matters in a collegial, responsive manner. Our passion is service; our standard is excellence.***

The SBAO has also developed a program called "**Serve with Passion, Creativity and Excellence**" in which SBAO staff establish relationships with administrators' offices,

schools, and programs to learn about their operations. Since July 2011, the SBAO has visited dozens of schools, administrative offices and departments and listened as the administrators explained their evolving legal needs and concerns.

The SBAO promotes professional development by facilitating learning opportunities with colleagues from other school districts around the State and the country. The SBAO hosted a presentation by the Broward School Board Attorney concerning representation of school district client interests. The SBAO also hosted a seminar by the Coral Gables City Attorney and Assistant County Attorneys on qualified and sovereign immunity. The School Board Attorney presented to the Broward County attorneys on school law issues and to school law attorneys from Louisiana, Arkansas, Texas and Mississippi on legal issues related to natural disasters and homeless students. The SBAO intends to continue to host and present at similar seminars and professional development presentations to develop its expertise and understanding of school law.

The SBAO has also conducted and hosted several important workshops and presentations on various legal topics that reached approximately 500 public officials, attorneys, employees, parents, K-12 students, law students, school teachers, school administrators and members of the public.

The Office has developed a variety of materials, videos, refresher courses and in-depth legal topics on the SBAO website at <http://attorneys.dadeschools.net/index.asp>

As we previously notified the Board, the school district's comprehensive revision of its School Board Rules was completed in May of last year. The new set of School Board Policies became effective on July 1, 2011 and all previously existing School Board Rules were repealed. This project was accomplished in record time through the tremendous efforts and cooperation between District staff and the SBAO. Policies adopted by the Board during this process have been disseminated to other school boards throughout the state as a model in certain areas. Routine and yearly updates (after each Legislative session) of School Board Policies are on-going and will continue on a regular basis.

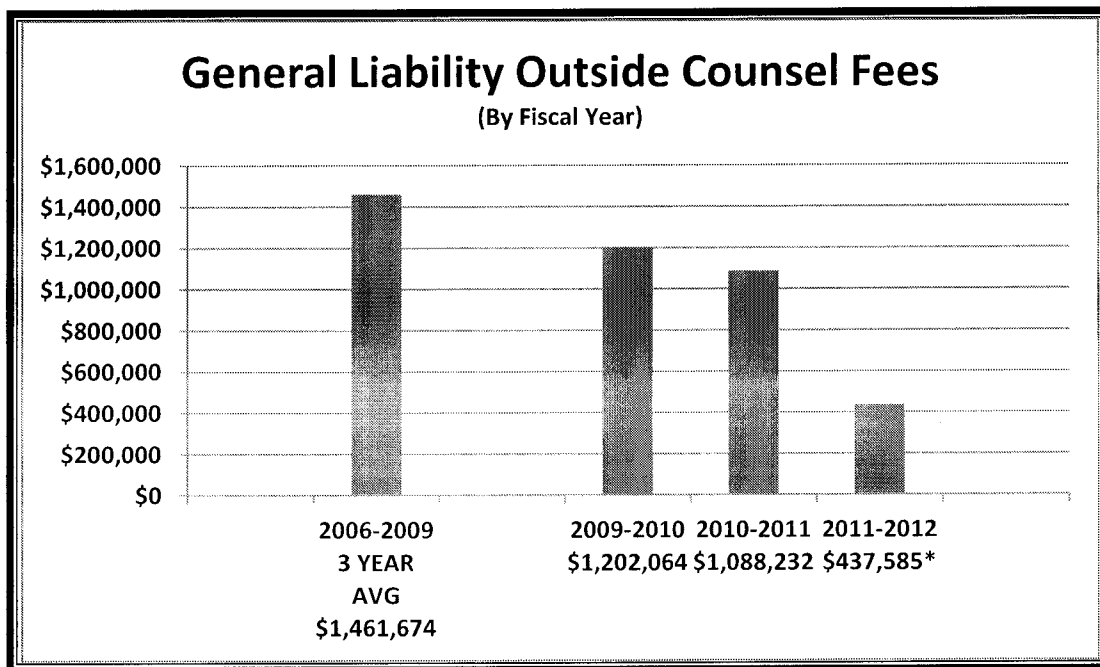
#### **FINANCIAL EFFICIENCY AND STABILITY**

The majority of SBAO's legal practice involves advising and representing the School Board, the Superintendent and District staff in specific adversarial proceedings and matters. The following sections provide a graphic summary of the myriad matters the office was involved in this year.

**Tort/General Liability:**

To reduce the outsourcing of legal services and the Board's legal expenditures, the SBAO has developed its staff by providing professional development opportunities and is now handling approximately 95% of its tort cases (claims seeking monetary damages for personal injuries, errors and omissions and damage to property) in-house while continuing to work with outside attorneys in certain specialized areas. The Board Attorney has also worked with the Risk Management Office to implement a program that has led to dramatic decreases in both overall exposure and fees in tort litigation.

The SBAO has also closed more litigated cases this fiscal year than any fiscal year in recent history. Many of the claims were opened as early as the 1990s, and all were closed on favorable terms either through judgments of dismissal or settlement.



\* Actual year to date is \$218,793, annual projection is \$437,585.

**Construction:**

The SBAO continues to work with Facilities staff under the direction of the Board to seek innovative ways of substantially reducing costs in the areas of facilities, construction and land use. For instance, in an effort to proactively reduce \$1.5 million in annual costs incurred by the District for stormwater fees, the SBAO filed an *amicus brief*

in the case of *City of Key West vs. Florida Keys Community College*, Third District Court of Appeal Case No. 3D11-417. The appeals court issued a favorable opinion for school districts and other sovereign entities and attracted statewide attention in the legal community. Although the School Board was not a party to this matter, the *amicus brief* and the ruling were significant for school districts throughout the state.

A further example of the efforts the SBAO has taken to continue to reduce costs in the areas of facilities, construction and land use can be illustrated through a Contracts Revision Project. This includes working with Facilities staff to revise existing District Contracts, including but not limited to the Miscellaneous CM-at-Risk Agreement, Building Code Consultant Agreement, and the Land Surveying Services Agreement.

In addition, the overall outsourcing of legal services in construction has reached historic lows. From July 1, 2011, to February 1, 2012, fees and costs for construction litigation have totaled approximately \$210,000. That is the lowest six-month total on record, while the number of construction claims and bid protests (17) have actually increased.

FISCAL YEAR	# CASES/ CLAIMS	TOTAL EXPENDITURE PER FISCAL YEAR
2004/2005	9	\$ 3,383,189.00
2005/2006	6	3,145,609.00
2006/2007	3	3,087,140.00
2007/2008	4	2,537,426.00
2008/2009	3	2,184,488.00
2009/2010	12	929,323.00
2010/2011	8	693,698.00
2011/2012	17	**\$210,818.00 <b>ANNUALIZED: \$421,637.00</b>

\*\*Invoices to date

**Personnel and Labor:**

The SBAO continues to provide extensive legal advice and representation in employee disciplinary matters which have increased significantly. According to the Office of Professional Standards (“OPS”), the number of terminations and suspensions doubled in the 2010-11 fiscal year and the number of legal reviews, evidentiary hearings, and trials involving personnel matters also increased. In spite of that, the number of cases tried and completed reached unprecedented levels. For example, two in-house personnel and employment attorneys closed more than thirty-one (31) cases overall, in both the state and federal courts and the Division of Administrative Hearings, through trials, judgments of dismissal or amicable settlements. This past year, SBAO reviewed 184 disciplinary cases and completed 13 evidentiary hearings before administrative law judges of the Division of Administrative Hearings.

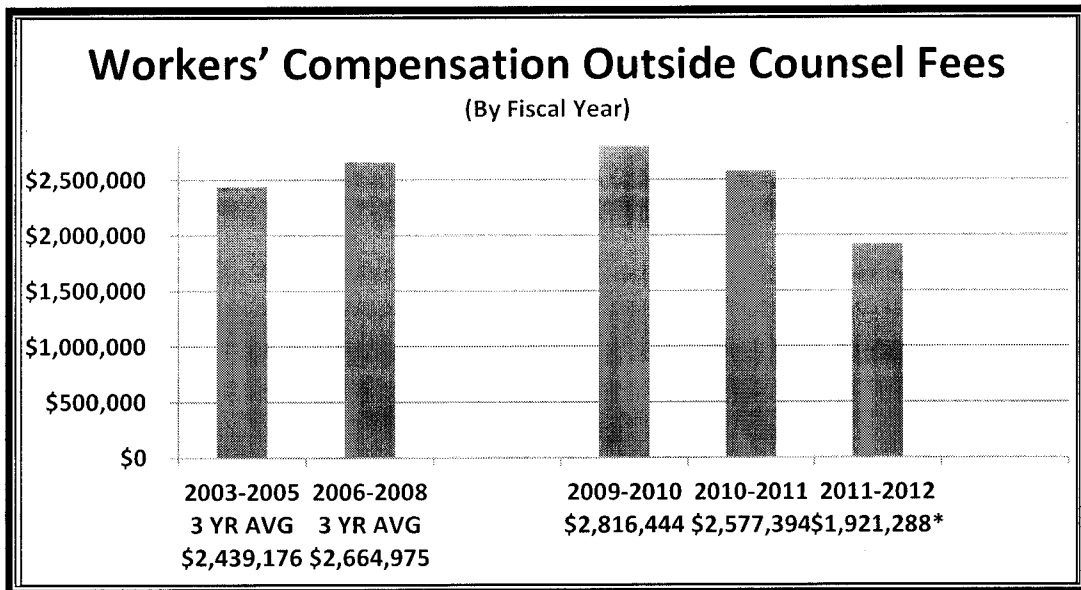
School Year	SUSPENSIONS			DISMISSALS			Other Legal Reviews
	# of OPS Investigations	Legal Reviews	Administrative Appeals	# of OPS Investigations	Legal Reviews	Administrative Appeals	
2009-2010	64	47	1	17	44	9	21
2010-2011	120	84	6	31	80	13	20

From 2009-2011, the Administrative Law Judges have ruled in favor of the School Board in a great majority of the cases taken to hearing finding that the School Board proved just cause in 86% of the administrative appeals. From 2007-09, that rate was just 55%.

For the current school year, the SBAO has already reviewed 86 OPS investigations. Seven of these investigations resulted in administrative appeals following Board action.

**Worker's Compensation:**

The SBAO continues to work with the Risk Management Office to support its proactive efforts in reducing workers' compensation expenses. Since 2010, the SBAO has provided legal advice regarding the processing of workers' compensation claims, and has also defended in-house those litigated workers' compensation claims identified as having a high financial exposure. In addition, the School Board's first in-house workers' compensation attorney has worked with the Risk Management Office to dramatically decrease exposure and fees in workers compensation litigation. The SBAO also actively monitors and works closely with outside legal counsel in support of the Risk Management Office's attempts to meet these goals, and the results have been fruitful.



\* Actual year to date is \$960,644, annual projection is \$1,921,288.

Furthermore, pursuant to Board authorization, the SBAO has collaborated with the Risk Management Office to implement a program with Gallagher Bassett Services, Inc. and Legal Solutions Group in which legal bills submitted by outside counsel in both tort and workers' compensation are electronically reviewed to ensure prompt and accurate payment of legal bills and compliance with applicable billing guidelines. During the first seven months since the program was implemented, the District realized a net savings of

more than \$64,000 in legal fees. It is anticipated that the total net savings could reach \$100,000 by the end of the District's 2011-12 fiscal year.

***ESE:***

Since July, 2011, the SBAO has provided representation and advice in matters involving the federal Individuals with Disabilities Education Act (IDEA), which gives families of special education children the right to have their child assessed or tested to determine special education eligibility and needs and to resolve their disputes with the school district through an impartial administrative and legal process. Over the last year, the SBAO has worked with staff to close out approximately seventy (70) cases, and also provided legal advice concerning a variety of complaints filed with the Office of Civil Rights.

***Charter Schools:***

The SBAO has represented the Board in a variety of lawsuits and appeals involving charter schools. Among the important cases litigated, the SBAO was able to secure a Summary Judgment in January of 2012 in a lawsuit filed in Illinois. In this case it was successfully established that certain commercial lease lawsuits cannot be properly filed outside the venue of Miami-Dade County, Florida.

***District Operations:***

The SBAO has provided extensive assistance to District staff in charter application reviews, terminations, and negotiating contracts. The SBAO continues to inform and advise District staff on changes in the law including federal and state regulations. In addition, the SBAO held or participated in several seminars and presentations at the District and throughout the legal community and these seminars have positively impacted our ability to work with opposing attorneys and other government attorneys for the benefit the School Board. The SBAO provided liaisons between the District's administrative offices and the SBAO. The SBAO also posted its PowerPoints from these presentations online.

For example, the in-house attorneys have been actively providing legal services to the School Police in the drafting of its new standard procedures concerning weapons screening at schools. After analyzing legal opinions from courts across the country and reviewing various screening policies from other school districts, in-house attorneys worked with School Police to create a legal policy that limits the District's liability while improving student safety and security in the learning environment.

The SBAO constantly and proactively adjusts to meet the demands for legal services and to efficiently and effectively provide legal services.

### **Contracts:**

The SBAO continues to advise District staff and the Board on a variety of complex and innovative concepts. The following examples illustrate the manner in which SBAO is helping School Board meet its strategic goals.

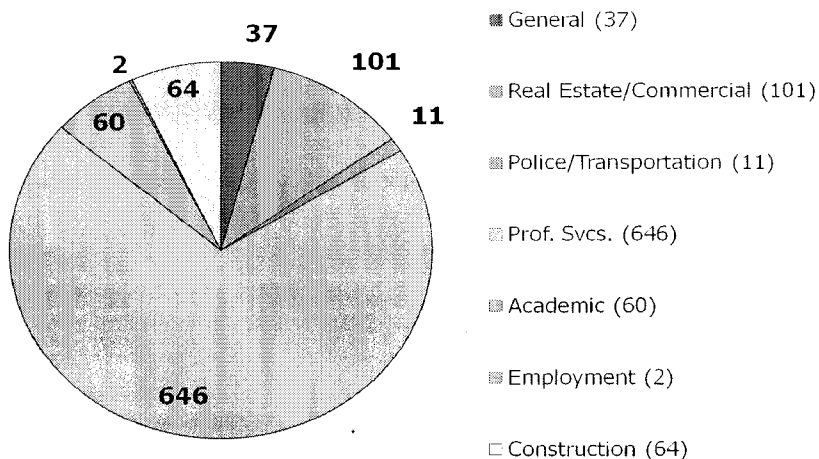
- a. At the request of the Superintendent, the SBAO provided an opinion concerning the issues regarding district-managed charter schools. The SBAO assisted in the negotiation of the agreement with the Miami-Dade Foundation for Education Innovation (MDFEI), in which District employees will manage charter schools throughout the District. This innovative concept was thoroughly reviewed by the attorneys and the SBAO drafted and negotiated the MDFEI Management and Lease Agreements in a short time-frame so that the schools could open by the beginning of the 2011-12 school year. The Ethics Commission later reviewed the concept of District-operated charter schools and found it presented no prohibited conflict of interest.
- b. The SBAO worked with Treasury staff to help negotiate and finalize five (5) complex banking services agreements which will define the delivery of all financial services provided to the District. A wide variety of complex transactions and services were contemplated, and these agreements will be the foundation for all future financial services provided to current and former employees and their families.
- c. The SBAO aided Facilities staff at the direction of the School Board to draft a Memorandum of Understanding with the City of Coral Gables regarding the Use of its City parks and school sites. The agreement will continue to provide needed services at little to no cost, while protecting the Board against liability.
- d. At the request of the Facilities staff, the SBAO provided legal advice regarding an inter-local agreement with the City of Sunny Isles Beach for a School Addition, and also advised and assisted staff on several important matters related to the agreement.
- e. The SBAO reviewed, drafted and revised a professional services agreement with new outside independent auditors.
- f. At the request of the Facilities staff, the SBAO provided legal advice regarding an inter-local agreement with the City of North Miami for



construction of a gymnasium, and also advised and assisted staff on several important legal matters related to the agreement.

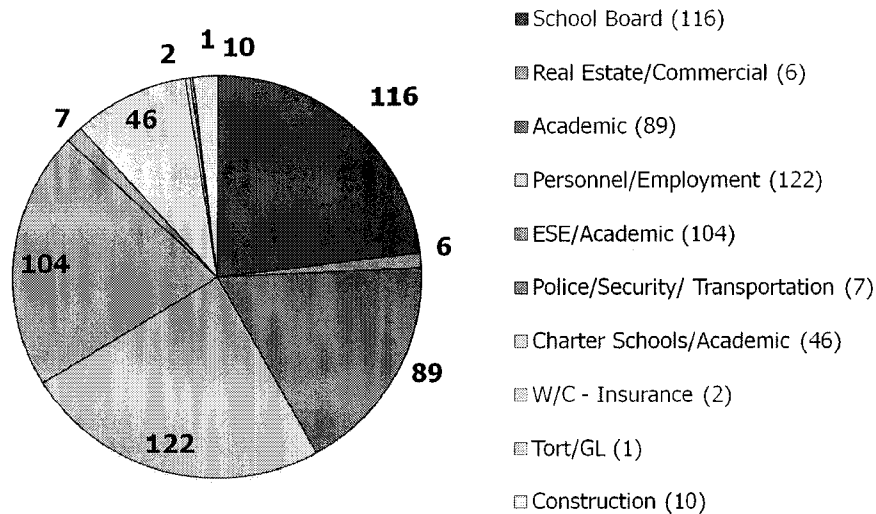
- g. The SBAO provided legal services concerning the closing with the Village of Pinecrest regarding Miami Palmetto Senior High School Parking Lot.
- h. The SBAO provided legal services concerning a Consent Agreement with DERM deferring capital costs to the District of approximately \$700,000 annually for up to three years.
- i. The SBAO provided legal services and advice concerning an agreement with the University of Miami School of Medicine for a health clinic for employees located at Jackson Senior High School. This is the first such agreement with this healthcare provider and establishes a precedent for future arrangements.

In addition, the SBAO continues to provide legal review of standard form contracts. The response time concerning these 646 standard contracts remains robust (average of 1.0 to 0.5 days) since 2009. A total of 921 contracts were drafted and reviewed this past year.



**Referrals and Requests:**

The SBAO handled 503 requests/referrals from the School Board, Superintendent and other Departments:



**Legislative Bill Analysis:**

Throughout the Legislative session, the SBAO provides continuous analysis of proposed bills and amendments. This year, the SBAO reviewed and provided comments on the legal ramifications and impact of more than 140 bills addressing a wide variety of issues that could impact the District.

**SCHOOL/DISTRICT LEADERSHIP**

**Support efforts to enhance scholarship and learning by investing in proactive measures**

- a. SBAO partnered with other offices to provide workshop opportunities on a range of topics designed to equip Department Heads with tools to enhance legal advice, performance and improve workflow.
- b. SBAO drafted new templates for professional services agreements, construction agreements and architectural and engineering agreements. These new templates will improve processing time, decrease the administrative burden for administrators, and foster increased cooperation and innovation by and between the School Board and the private sector.

**Support efforts to enhance organizational excellence by creating a culture of constant improvement**

- a. The SBAO played a major role in reducing barriers in the Board policy system by working collaboratively with executive staff to revise various School Board Policies, Manuals, Procedures, Regulations and Rules while maintaining legal compliance and internal controls. Since the entire Policy Manual was rewritten, effective July 1, 2011, the SBAO has assisted staff in the review and/or drafting of approximately 78 policies, manuals and procedures and approximately 11 policies, manuals and procedures are currently being developed.
- b. SBAO significantly enhanced its ability to handle referrals and requests for legal opinions efficiently and effectively by designating its office manager and legal assistant to perform designated duties concerning agendas, records requests and quality control. Since this designation was made in July 2011, the coordinator has helped record and track legal cases, assignments and public record requests (see Section B.5. above), and spearheaded initiatives related to archiving of forms, documents, legal resource materials, emails and updating record retention procedures. Requests and referrals to the office have tripled over the last year, and the office has increased its capacity to respond to those requests and referrals quickly.

***Completion of Redistricting Process:***

The School Board at its November 22, 2011 meeting, approved Resolution 11-129 in accordance with Section 1001.36(2), Florida Statutes (2011) and the Federal District Court order of November 18, 1994, approving nine (9) single-member districts for the School Board of Miami-Dade County, Florida and mandating that the School Board reapportion its districts after each decennial Census. The Resolution reapportioned the boundaries of the district school board member residence areas and established new election districts for each of the nine School Board voting districts. As required by law on December 14, 2011, the School Board published its newly redrawn nine districts in *The Miami Herald*.

The Board Attorney has also received several recognitions and awards since July 2011, including the 2012 South Florida Legal Guide's Top Lawyers, the 2012 Super Lawyers and The Legacy Legal Leader Award recognition (to be published in a special section of the Miami Herald.).

The Board Attorney was also re-appointed by Chief U.S. District Court Judge Federico Moreno to serve on the United States Magistrate Selection Panel, leading to the

appointment of two U.S. Magistrate Judges. In addition, other attorneys in the office received significant certifications, recognitions, distinctions and awards for their work in school law and have been invited to present at several local law schools.

The SBAO continues to participate in various community activities, including pro-bono activities at District schools, such as the student seminar on the United States Constitution with Florida Supreme Court Justice Fred Lewis at Mourning Senior High School and the Black History and Hispanic History Symposiums hosted by Federal District Court for the Southern District of Florida.

**RECOMMENDED:** That The School Board of Miami-Dade County, Florida accept the March 2012 Quarterly Report of the School Board Attorney.