

Office of Superintendent of Schools
Board Meeting of April 17, 2013

April 9, 2013

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

SUBJECT: ANNUAL REPORT TO THE BOARD

COMMITTEE: SCHOOL SUPPORT AND ACCOUNTABILITY

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 report is being provided to keep the Board apprised of the important work completed over the past 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.

In addition, this item seeks to formalize the salary ranges and service-delivery model of the School Board Attorney's Office at no additional expense to the District.

OVERVIEW

Since the 2010-2011 fiscal year, SBAO transformed itself in both form and substance, dramatically shifting its culture to a renewed emphasis on professional development and client service.

Over the past two years, the SBAO has implemented and utilized technological upgrades, including a comprehensive document management database, for tracking and storing its requests, claims and casework and assessing the overall workload of the office. According to the data collected, the SBAO has continued to experience a substantially higher workload, to respond substantively and efficiently to administrative requests and to streamline the various office duties and functions in an effort to increase work volume, efficiency 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 are paired with

G-5

REPLACEMENT

current employees to form a dynamic legal team that continues to transform the manner in which legal services are delivered in the District environment.

The SBAO will continue to provide competent and specialized legal services to assist the School Board and District staff in facing anticipated future legal challenges and carrying out their respective 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 and policies.

PILLARS

STUDENT, PARENT AND COMMUNITY ENGAGEMENT

In 2011, 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. In addition, the attorneys have given lectures at various schools throughout the District, including working with moot court teams in countywide and statewide competitions. The SBAO has developed a program to provide internship opportunities for high school students, so that they can learn more about the legal field. Over the past three years, the SBAO's attorneys have

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. Over the last three years, 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 SBAO organized and hosted a professional development presentation from the General Counsel for the Florida Commission on Ethics, a presentation by an appellate court judge concerning arbitrations and several other esteemed guests have provided continuing education lectures concerning representation of school district client interests. The office 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 school law attorneys from other states on legal issues related to public records, secondary school conversion models, school law governance, coping with natural disasters and the rights of 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 laws concerning K-12 Education.

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>

Since the school district's comprehensive revision of its School Board Rules was completed in record time and under budget in May of 2011, the SBAO has continued to collaborate with District staff to develop new policies and update current policies. School Board Policies serve as a model for other school boards in a variety of areas. Routine and yearly updates (after each Legislative session) of School Board Policies are ongoing and will continue on a regular basis. In addition, the SBAO works with administrative staff and other attorneys throughout the state to provide analysis and input concerning State Board of Education rules and legislative bills impacting public education..

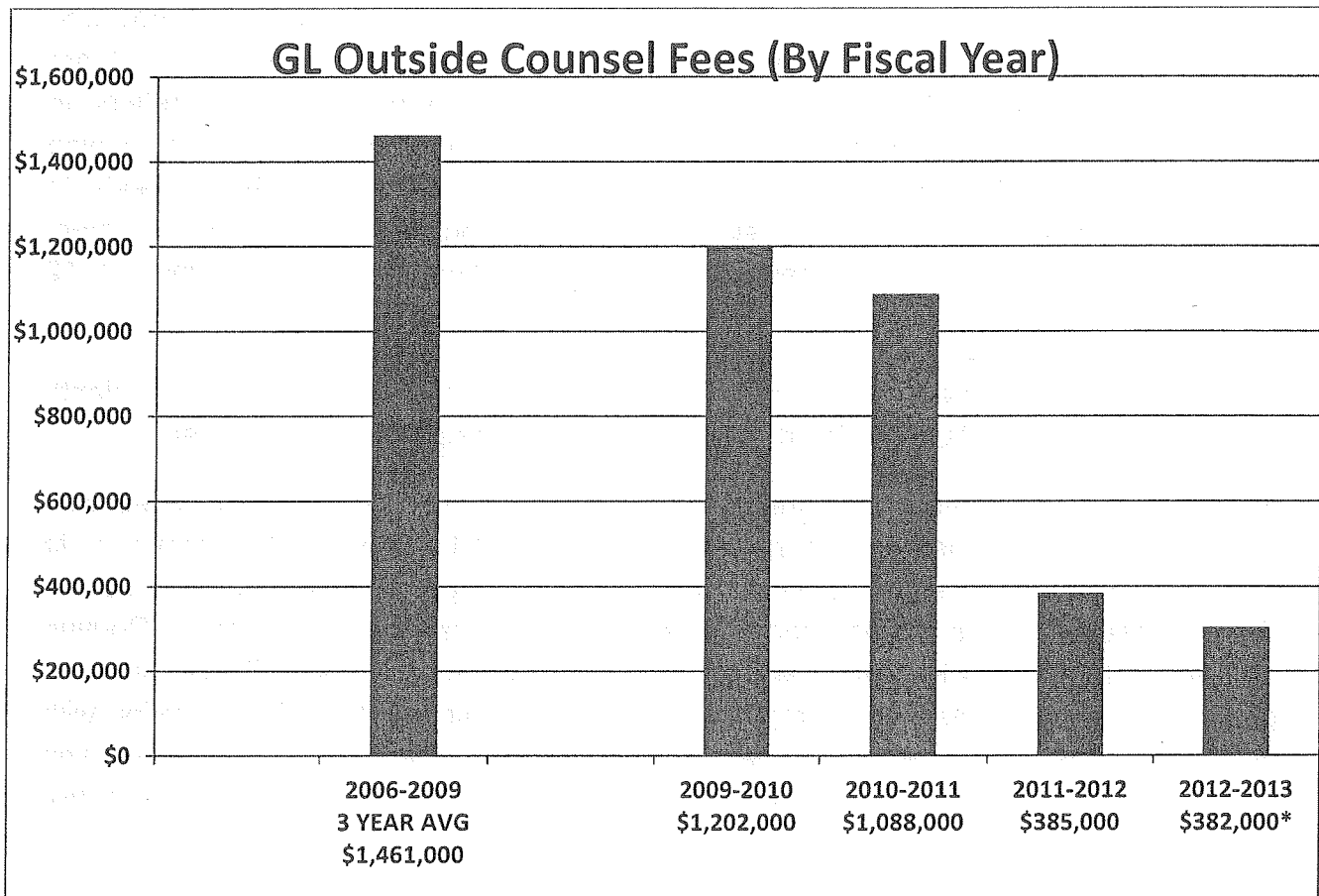
FINANCIAL EFFICIENCY AND STABILITY

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 brief summary of the numerous matters handled by the SBAO.

Tort/General Liability:

To reduce the outsourcing of legal services and the Board's legal expenditures, the SBAO has improved its internal efficiencies and productivity so that it has been handling approximately 95% of the general liability claims (claims seeking monetary damages for personal injuries, errors and omissions and damage to property) in-house while continuing to partner 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. Some of the claims that were closed had been pending for nearly a decade, and most were closed on favorable terms either through judgments of dismissal, settlements or appeals.



*** ANNUALIZED**

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

Construction:

Under the direction of the Board, the SBAO has worked with Facilities staff to recover moneys through the assertion of claims and has closed a number of projects on terms favorable to the District. Facilities staff and SBAO continue to collaborate to seek innovative ways of substantially reducing costs in the areas of facilities, construction and land use. For instance, the SBAO proactively 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 resulting in an annual \$1.5 million savings by the District for stormwater fees. Although the School Board was not a party to this matter, the *amicus brief* and the ruling were significant for school districts and other governmental entities throughout the state and attracted statewide attention in the legal community.

The SBAO also worked with Facilities staff to resolve an eminent domain matter involving a 38 acre parcel in Southwest Miami-Dade County. The original taking process was initiated by the District in 2007 and the District made a monetary offer to settle in October 2007. The land owners did not accept the offer and the matter was litigated, ultimately resulting in favorable Court rulings in December 2012 that led the owners to reduce their original demand by approximately \$10,000,000, and to accept the original offer made by the District in 2007.

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 revision of construction-related contracts. This includes a two year effort of working with Facilities staff to revise a series of 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 continues to reach historic lows. Even though the number of construction claims and bid protests (17) have actually increased, fees and costs for construction litigation have totaled approximately \$210,000 from July 1, 2012, to February 1, 2013 which is the lowest six-month total on record.

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	\$561,654.23

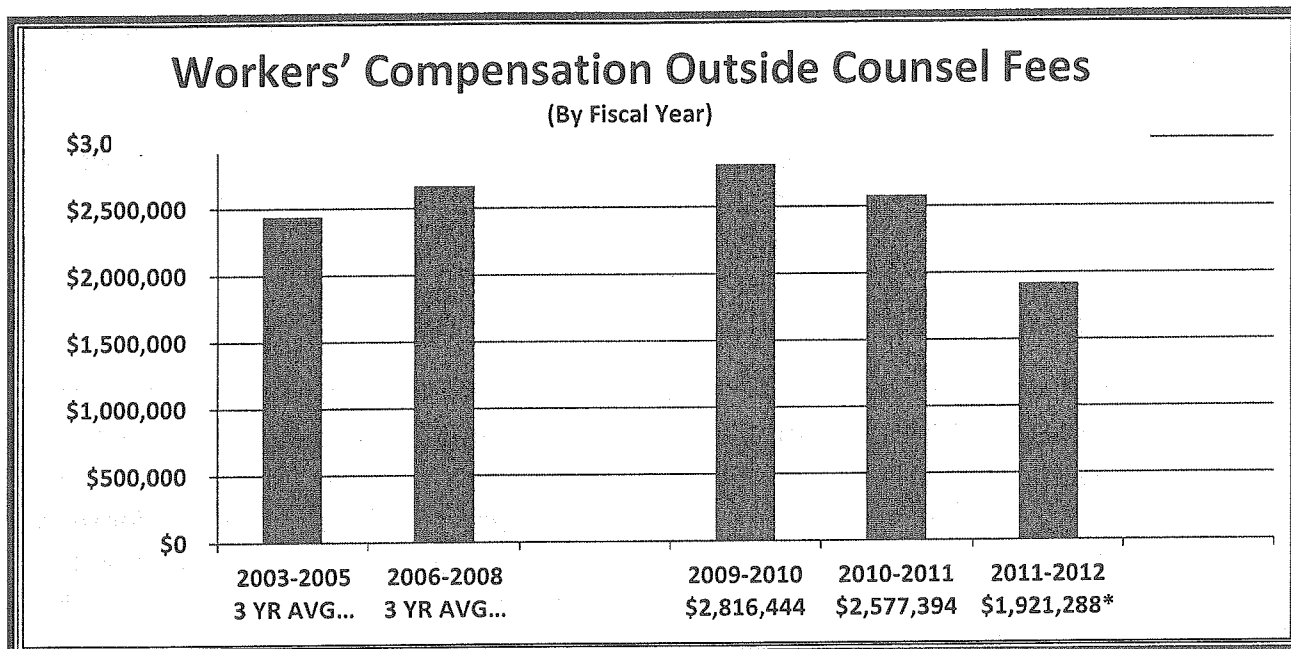
**Invoices to date

Personnel and Labor:

The SBAO continues to provide extensive legal advice and representation in employee disciplinary matters. Since July 1, 2012, the two in-house personnel and employment attorneys closed more than twenty-one (21) cases in state and federal courts and the Division of Administrative Hearings (DOAH) through trials, dismissals or settlements. During the same period, SBAO reviewed 118 disciplinary cases and completed 15 DOAH hearings.

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 actively monitors and works closely with outside legal counsel in support of the Risk Management Office's successful efforts to meet these goals.



* 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 nineteen months of the program, the District realized a net savings of more than \$171,953 in legal fees and costs through February 1, 2013.

Academic/ESE:

The SBAO assists various departments such as the Office of Innovation and Accountability, School Operations/Adult Education, Exceptional Student Education, Psychological Services, and Student Services in the development, review, and application of laws and policies to a wide variety of student issues. The SBAO continues to provide representation and advice on student discipline matters, including a federal court challenge involving constitutional due process for student suspensions. Additionally, the SBAO fields a high volume of calls from Principals, Assistant Principals, Region staff, and District administration on daily operational issues concerning students. For example, the attorneys in the Academics section answer an estimated 1,000+ calls in a calendar year on issues such as child custody matters, student records, academic accountability, extra-curricular activities, student discipline, school assignments, student rights and special education/accommodations.

The SBAO provides extensive 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 sixty four (64) cases, and also provided legal advice concerning a variety of complaints filed with the Office of Civil Rights and the Florida Department of Education.

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 an appellate decision in *School Board v. Rise Academy Charter Schools, Inc.*, 90 So. 3d 1001 (Fla. 3d DCA 2012), reversing a 2010 State Board of Education (SBE) decision overturning the School Board's closure of a failing charter school, arguing that the School Board's judgment in these cases deserves great deference and cannot be overturned by the SBE without substantial competent evidence. The decision has had a positive statewide impact on SBE action in similar charter school proceedings.

The SBAO continuously contributes significant legal analysis and statewide leadership on charter school administrative rule-making and legislation by drafting and submitting comments and suggested language that benefits the School Board and protects its interests. The SBAO provides extensive assistance to District staff in charter application reviews, terminations, and negotiating contracts.

District Operations:

The SBAO continues to inform and advise District staff on changes in public education 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 and has posted the presentations on its website.

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.

In addition, the SBAO recently made a presentation to District principals on child custody disputes.

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

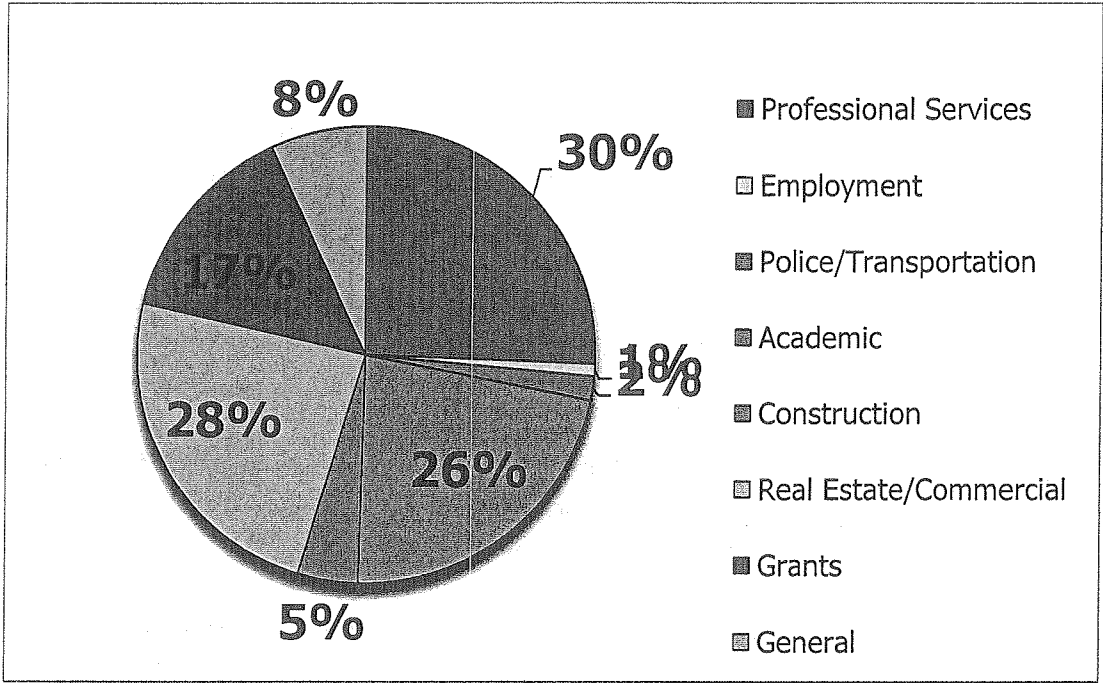
Contracts:

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. The SBAO continues to assist in the negotiation of management and facilities agreements with charter schools operating in District properties.
- b. The SBAO worked extensively assisting with the negotiation of an Interlocal Agreement with the Village of Key Biscayne to provide facilities and grounds improvements for Key Biscayne K-8 and to provide a secondary school option for Key Biscayne students at MAST.
- c. The SBAO provided legal advice regarding an Interlocal Agreement with the City of Palmetto Bay to upgrade the facilities and curricular offerings at two schools located in that city. .
- d. The SBAO provided legal advice regarding developing a District-managed charter school in the City of Doral.
- e. The SBAO provided legal services and advice on the Standard Form for Charter School Contracts and the new Virtual Charter Standard Contract.
- f. The SBAO provided legal services concerning at least 25 new charter contracts and amendments.
- g. The SBAO also advised the District regarding the Head Start Interlocal Agreement with Miami-Dade County, the Public School Concurrency Proportionate Share Mitigation Agreement, and the Professional Services Agreement with Teach for America, Inc., re: Race to the Top Grants.

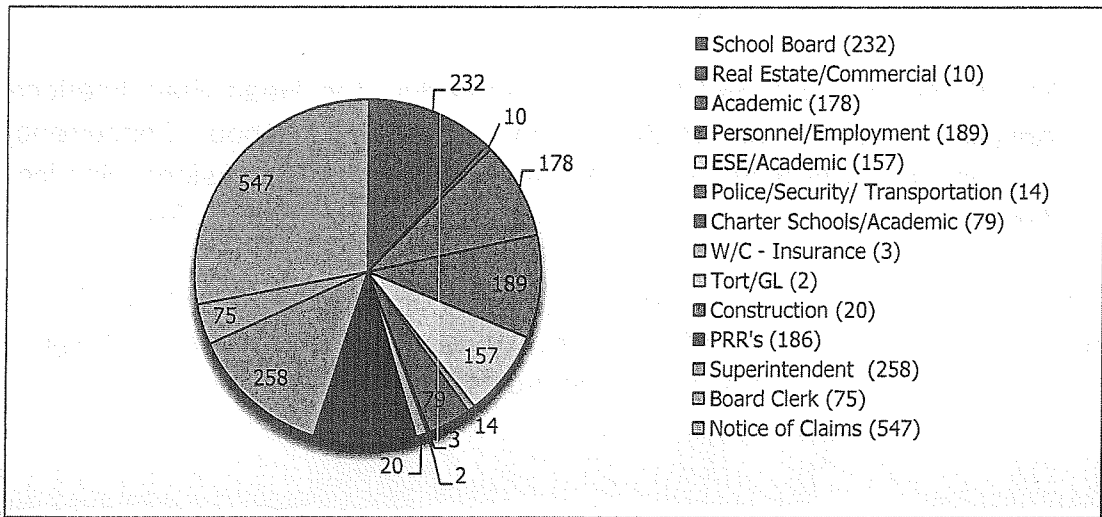
In addition, the SBAO continues to provide legal review of all standard form contracts. The response time concerning these 646 standard contracts remains robust (average of 1.0 to 0.5 days) since 2009. A total of 957 contracts were drafted and reviewed this past year.

CONTRACT 07/01/2012 thru 04/05/2013



Referrals and Requests:

The SBAO handled 1950 requests/referrals on 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 160 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.

Awards and Recognitions:

The School Board Attorney has become a Registered Parliamentarian. In addition, two attorneys have become Florida Bar Board certified as specialists in Education Law and one attorney has become eligible for certification. Several attorneys are recognized as statewide legal experts in their practices and provided more than 60% of the lectures and materials for the recent Education Law Certification exam in the areas of Construction of Education Facilities, Procurement, School Site Acquisition, Charter Schools, Student Rights, Student Discipline and Special Education. Several professionals in the SBAO have received statewide recognitions and awards.

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, the Board Attorney was appointed to a select group of attorneys to the United States District Court Steering Committee for the 2013 Bench and Bar Conference to be held in Miami. 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.

In addition, the Miami was selected for the first time to host the Fall 2013 quarterly conference for the Florida School Board Attorney's Association (FSBAA) in September.

OFFICE COMPOSITION/ FUTURE GOALS AND INCENTIVES

As indicated, the vast majority of the District's legal work is handled internally by the School Board Attorney's Office in a competent and professional manner as evidenced by the high degree of success in litigation and other matters. The transition of the

majority of tort cases and other litigation to in-house staff has had a dramatic impact in the financial savings to the District.

Because of the nation's improved economic picture, however, it is increasingly difficult and a significant challenge to attract and retain experienced attorneys under the current salary structure for the School Board Attorney's Office. Private firms offer salaries that are often at least double SBAO salaries. Additionally, attorneys in our office are currently compensated at a substantially lower rate than what was in effect in 2005. It is imperative that the District offer additional incentives to ensure that, at a minimum, the SBAO can retain and attract experienced legal counsel to represent the Board in the myriad of litigation that the District must regularly contend with.

In order to meet the challenge of retaining experienced attorneys and support staff (paralegals) with our District, the School Board Attorney is proposing the following revised salary schedule. The implementation of this schedule will be cost-neutral and within the School Board Attorney's Office's budget. The attorneys will remain on annual contracts with a managerial exempt benefits package. An updated organizational chart and a standard form annual contract are attached.

**SALARY SCHEDULE
ATTORNEYS**

Pay Grade	Job Code	New Minimum	New Maximum
1	8107	\$180,000.00	\$199,000.00
2	8103, 8104 8106, 8203 8205	\$130,000.00	\$179,000.00
3	8105	\$65,000.00	\$130,000.00
4	8002	\$45,000.00	

Job Code

- 8002 - Law Clerk
- 8106 - Risk/Management/Litigation
- 8103 – Academic Programs & Compliance
- 8104 – Business Operations/Contracts/Real Estate/Procurement
- 8105 – General Litigation I – Entry Level
- 8107 – Deputy Assistant School Board Attorney
- 8203 – Personnel/Litigation
- 8205 – Exceptional Student Education

**SALARY SCHEDULE
LEGAL STAFF**

Pay Grade	Job Code	New Minimum	New Maximum
1	8108	\$50,000.00	\$89,000.00
2	4541	\$40,000.00	\$77,000.00
3	7528	\$30,000.00	\$51,000.00

Job Code

- 8108 – Legal Administrative Coordinator
- 4541 - Paralegal
- 7528 - Legal Specialist

SCHOOL BOARD ATTORNEY'S OFFICE

<u>Attorney</u>	<u>Title</u>	<u>Job Code</u>
Ana Craft	– Business Operations /Contracts/Real Estate/Procurement	– 8104
Luis M. Garcia	– Deputy Assistant School Board Attorney	– 8107
Alil Graupera	General Litigation 1	8105
Jeff James	– General Litigation 1	– 8105
Mary Lawson	– Exceptional Student Education	– 8205
Sara Marken	– General Litigation 1	– 8105
Melinda McNichols	– Academic Programs & Compliance	– 8103
Simona Popova*	– Law Clerk/General Litigation 1	8002
Arianne Suarez	– Personnel/Litigation	– 8203
Henry Suarez	– Risk/Management/Litigation	– 8106
Heather Ward	– General Litigation 1	– 8105

<u>Legal Staff</u>	<u>Title</u>	<u>Job Code</u>
Cynthia Bell	– Legal Specialist	– 7528
Pamela Carter	– Paralegal	– 4541
Laureen Gerard	– Paralegal	– 4541
Jamila Khullar	– Legal Specialist	– 7528
Desiree Llopiz	– Legal Administrator Coordinator	– 8108
Carlota Noguera	– Legal Specialist	– 7528
Karen Regan	– Legal Specialist	– 7528
Celia Rubio	– Paralegal	– 4541

** Upon passing the Florida Bar, Ms. Popova will shift from 8002 to 8105*

RECOMMENDED:

That The School Board of Miami-Dade County, Florida

- 1) accept the April 2013 Annual Report of the School Board Attorney;
- 2) approve the attached updated salary schedule for the attorneys in the School Board Attorney's Office,
- 3) authorize the Board Attorney to implement the schedule within the Office's established budget and approve the revised annual contracts for the attorneys and support staff.

Attachment

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement") is made effective this ____ day of _____, 2013, by and between THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA (the "Board"), and _____ ("_____").

WITNESSETH:

WHEREAS, pursuant to a written Agreement between the Board and Walter J. Harvey (the "Board Attorney"), the "Board Attorney" is responsible for the selection, hiring and supervision of additional attorneys as may be necessary for the proper handling of the work of the Board; and pursuant to said Agreement, each additional attorney is to be employed by the Board; and

WHEREAS, the Board Attorney desires that _____ be employed as Assistant School Board Attorney – _____, and _____ desires to accept such employment subject to all of the provisions of the Agreement between the Board and the Board Attorney.

NOW, THEREFORE, the parties hereto agree as follows:

1. The Board agrees to employ _____ as Assistant School Board Attorney – _____ at an annual salary for the amount of _____ and no/100 Dollars (\$ _____), payable in biweekly installments, for the period from _____, 2013, to _____, 2014, subject to increase as the Board, the Board Attorney, and _____ may agree.

If the managerial exempt employees receive a salary increment, then the same salary increment will be applied to my salary.

2. The Board will pay the basic annual dues for the attorney's membership in the Florida Bar during the term of this Agreement.

3. In addition to the compensation herein above provided, _____ shall be entitled to participate in such insurance and retirement plans and other fringe benefits as may be available from time to time to the managerial exempt employees of the Board, and shall be entitled to reimbursement for travel and related expenses according to applicable law and Board Rules and regulations.

4. The duties and assignments of _____ as Assistant School Board Attorney – _____ shall include the responsibilities as set forth in the Job Description for Assistant School Board Attorney - _____, as amended from time to time, and the performance of such other duties and assignments as the Board Attorney shall direct. In the conduct of his/her duties, his/her shall be fully and solely responsible and accountable to the Board Attorney.

5. _____ agrees to devote his/her full time and efforts to the performance of his/her duties and responsibilities as Assistant School Board Attorney - _____ and further agrees not to accept or perform any legal services for any client other than the Board which may in any way conflict with the legal business of the Board or with his/her duties and responsibilities as such Assistant School Board Attorney – _____.

6. This Agreement may be terminated at the option of the Board Attorney or _____ on thirty (30) days' written notice to the Board and to the Board Attorney, or to _____, as the case may be, it being understood that except as so provided, _____'s right to employment shall be subject to the Board Attorney's absolute right to terminate this Agreement at will.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the ____ day of _____, 2013.

ATTEST:

**THE SCHOOL BOARD OF MIAMI-DADE
COUNTY, FLORIDA**

Alberto M. Carvalho
Superintendent of Schools

By: _____
Ms. Perla Tabares Hantman
Chair

By: _____
Assistant School Board Attorney

Approved as to Form and Legal Sufficiency:

Walter J. Harvey
School Board Attorney

ORGANIZATIONAL CHART 2013

