

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

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 five years, the SBAO has implemented and utilized technological upgrades, including a comprehensive document management database, for tracking and storing requests, referrals, 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 substantively and efficiently respond to administrative requests and to streamline various office duties and functions in an effort to increase work volume and effectiveness. Our records and data show that over the last five years, 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.

In addition, the SBAO has reorganized its functions in a manner to support District staff's delivery of high quality education at its schools. In this regard, several attorneys and professionals have been assigned to work directly with Cabinet level administrators and departments. SBAO Attorneys and staff are paired with District employees to form a

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

As part of the SBAO's mission, we 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 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 costs 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 and drafting landmark agreements and policies.

PILLARS

STUDENT, PARENT AND COMMUNITY ENGAGEMENT

In 2011, the SBAO 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 five years, the SBAO has also conducted and hosted several important seminars, lectures, workshops and presentations on various legal topics that reached approximately 750 public officials, attorneys, employees, parents, K-12 students, law students, school teachers, school administrators and members of the public.

The SBAO organized and hosted an ethics training presentation for public officials for the Florida Commission on Ethics. This training was conducted to allow public officials to meet their requisite of four hours of ethics training. The course was also certified by the Florida Bar for Continuing Legal Education requirements, and several judges and attorneys have provided continuing education legal lectures. The School Board Attorney has presented to school law attorneys and public officials from other states on legal issues related to public records, streamlining of legal services, and governance. The SBAO 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>. 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.

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. Our 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 on-going 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:

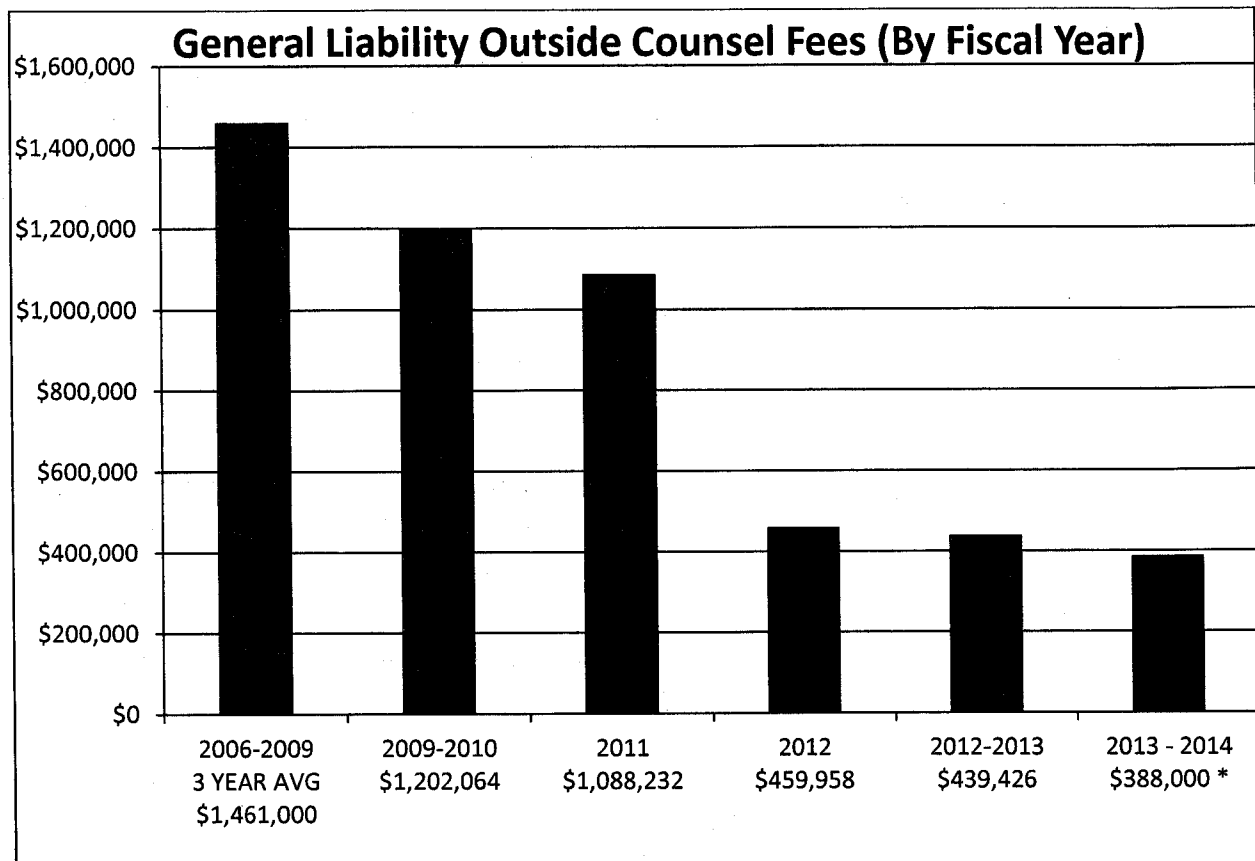
The SBAO in-house attorneys defend the majority of all general liability claims (claims seeking monetary damages for personal injuries, errors and omissions and damage to property), therefore minimizing the outsourcing of legal services and the Board's legal expenditures. Since July 1st, 2013, a total of 1,126 claims have been received and 48 additional general liability lawsuits have been filed against the District, all of which are being defended by the SBAO in-house attorneys.

During FY 2013-14, the SBAO finalized new contracts for legal services on an as-needed basis with outside counsel and established a list of pre-approved attorneys and firms at specified hourly rates. However, no new general liability claims have been outsourced. As a result, outside counsel legal fees are currently the lowest in recent history (see chart below).

The SBAO also works closely with Gallagher Bassett Services (the District's third party claims administrator) in investigating high exposure negligence claims prior to the filing of any legal action. This includes the early involvement of SBAO staff with specialized expertise in the investigation of serious allegations for the purpose of securing necessary witness statements and key evidence.

The SBAO has also closed more litigated cases the last two fiscal years than in any previous year on record. The general liability cases were finalized and closed on favorable terms either through judgments of dismissal, settlements or appeals.

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* - Annualized

Total includes attorney's fees and expenses

Construction:

Under the direction of the Board, the SBAO has worked with Facilities staff to recover funds through the assertion of claims and has closed a number of projects on terms favorable to the District. Facilities staff and the SBAO continue to collaborate to seek innovative ways of substantially reducing costs in the areas of facilities, construction and land use. After this success in obtaining a ruling from the courts clarifying that the School Board's sovereign immunity prohibited municipalities from arbitrarily and unilaterally imposing stormwater fees on school districts, bills were introduced during the 2013 and 2014 legislative sessions that would have required school districts to waive sovereign immunity and pay these fees. The SBAO worked with several school board attorneys throughout Florida, District staff and counsel in the Governor's office to defeat attempts by local governments to impose additional stormwater and inspection fees on school boards.

A further example of the efforts the SBAO has taken to continue to reduce ongoing costs in the areas of facilities, construction and land use can be illustrated through

revisions of construction-related contracts in conjunction with the advertisement and awarding of the 21st Century General Obligation Bond (GOB) Projects. This includes working with Facilities staff to revise a series of existing District form construction and professional service form contracts, including but not limited to the Miscellaneous CM-at-Risk agreements, Architect/Engineer agreements, Building Code Consultant agreements, and the land Surveying Services Agreements.

In addition, the overall cost of legal services in construction continues to reach historic lows. Even though the number of construction claims and bid protests remain robust, fees and costs for construction litigation have totaled approximately \$291,966.35 from July 1, 2013, to May 30, 2014 which is the lowest 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
2012/2013	11	\$461,633.04
2013/2014	7*	*\$291,966.35

** The 2013-2014 FY does not include invoices for the month of June, 2014.*

***These 2004-2014 figures exclude figures associated with real estate and eminent domain*

Transportation:

For the past year, the SBAO has been working closely with the District's Transportation Director, the Florida Department of Transportation (Sunpass Services) staff and the Miami-Dade Expressway Authority to eliminate incorrect toll violations charged to the District for years. Through these efforts, these violations have been corrected for registered District vehicles. The SBAO and the District's Transportation Department have been reviewing the past violations, negotiating payment options and attempting to

eliminate usage fees on these violations, effectively saving the District a significant amount of penalties and fines.

The SBAO, the District's Transportation Office, and the Homeless Education Program have also been coordinating efforts to assure that the District complies with its McKinney-Vento Act responsibility to provide transportation to homeless students.

Personnel and Labor:

During fiscal year 2013-2014, while the SBAO continued to provide extensive legal advice and representation in employee disciplinary matters, there was a dramatic increase in the number of employee matters and cases handled by the SBAO. Since July 1, 2013, the three in-house personnel and employment attorneys handled forty-three (43) cases in state and federal courts and the Division of Administrative Hearings (DOAH) through trials, dismissals or settlement. The distribution among all tribunals was as follows: State and Federal (8); DOAH (33); and EEOC (2). Twenty-two of these cases have been closed, which included the completion of sixteen (16) evidentiary hearings or trials before DOAH, (1) exceptions hearing, and one (1) appellate case before the Third District Court of Appeal. During the same period, the SBAO conducted 183 legal reviews, responded to 84 referrals, and handled 558 duty calls.

Office of Risk and Benefits Management Support:

The SBAO works closely with the Office of Risk and Benefits Management to reduce general liability and workers' compensation claim expenses. The SBAO also provides legal support required for the implementation of the District's insurance and self-insurance programs, including the issuance of RFPs and drafting of contracts. For example, during FY 2013-14 the SBAO provided extensive legal assistance to the Office of Risk and Benefits Management in the negotiations and implementation of a contract with the University of Miami to open the District's first on-site employee health center which is scheduled to open at Miami Jackson Senior High School. The SBAO is also assisting staff in the preparation and processing of the RFP for the District's new employee health insurance plan which will be effective as of January 1, 2015.

The SBAO continues to provide legal counsel to both District staff and Gallagher Bassett Services in the defense of litigated workers' compensation claims and defends in-house litigated workers' compensation cases involving multiple legal claims in other areas such as personnel, employment discrimination, and insurance subrogation. The SBAO also represents the District before the DOAH Judges of Compensation Claims in all workers' compensation settlements requiring judicial approval. The SBAO actively monitors and works closely with outside legal counsel on those workers' compensation claims identified as having a high financial exposure.

Academic/Exceptional Student Education:

The Academic/ESE department is led by two of the Florida Bar's first Education Law certified attorneys. During 2013-2014, the SBAO continued to assist various departments such as the Office of Innovation and Accountability, School Operations/Adult Education, Exceptional Student Education, Psychological Services, Charter School Support, and Student Services in the development, review, and application of laws and policies to a wide variety of student issues.

The SBAO provided extensive representation and advice in matters involving the federal Individuals with Disabilities Education Act (IDEA) to resolve disputes involving students with disabilities through resolution or an impartial due process hearing. During 2013-2014, the SBAO worked with staff in handling twenty-four (24) administrative and three (3) federal special education matters. The SBAO achieved a favorable outcome in the case of *A.L. vs. The School Board of Miami-Dade County*, 10-24415-CIV (S.D. Fla.), which involved novel claims under IDEA and Section 504 of the Rehabilitation Act of 1973. The SBAO also obtained dismissals in other federal cases including a case filed alleging substantive and procedural due process violations related to the discipline of a student. The SBAO works closely with the ESE department to reduce the overall number of cases by analyzing trends, tailoring litigation and appeal strategies, and targeted training. The SBAO also provided representation and advice on general student discipline matters. The SBAO continues to assist District staff in responding to complaints filed with the United States Department of Education, Office for Civil Rights ("OCR") and the Florida Department of Education. Based on complaints filed by parents with OCR, the SBAO assisted staff in revising policies and training principals on issues involving student sexual harassment and equality in admission to school programs.

On a daily basis, the SBAO addresses 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 and written correspondence in a calendar year on issues such as child custody matters, student records, court subpoenas, court orders, academic accountability, extra-curricular activities, student discipline, school assignments, student rights and special education/accommodations.

To provide for more efficient ESE case processing and to "go green," the SBAO worked with District staff and Information Technology (IT) department to develop a Collaboration Site for information exchange between schools and the SBAO. Additionally, the SBAO has led a working group of School Board Attorneys in negotiating a Records Sharing Agreement with the Department of Children and Families to implement the Uninterrupted Scholars Act.

Charter Schools:

The SBAO has represented the Board in a variety of lawsuits and appeals involving charter schools. Among the most recent important cases litigated, the SBAO convinced the State Board of Education to dismiss an appeal filed by the City of North Miami challenging the School Board's rejection of its municipal charter application because it violated the Board's 2006 Interlocal Agreement (ILA) with the City. The dismissal for lack of jurisdiction establishes the School Board's authority to reject an application and significantly strengthens its ability to protect the ILA in which the School Board invested approximately \$174 million in City schools and recreational facilities in return for the City's promise not to seek a charter school.

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 interest. The following list illustrates the extensive assistance provided during FY 2013-14 in charter application reviews, terminations, legal opinions, contract negotiations, and other legal matters relating to charter schools.

- a. Assisted in reviewing 35 charter applications, including preparing 5 denial Board items;
- b. Assisted in negotiating 35 charter contracts, including new, renewals and amendments;
- c. Provided legal advice and written opinions to School Operations and to the Chief Auditor;
- d. Provided legal assistance for investigations involving charter schools;
- e. Provided legal advice, opinions and items regarding the new state required standard charter contract;
- f. Handled one charter school termination in the Division of Administrative Hearings (DOAH);
- g. Handled two charter application denials to the State Board of Education;
- h. Participated in multiple statewide meetings, conference calls related to development of standard charter contract and rulemaking;
- i. Provided almost daily legal assistance to Charter School Support and School Operations;
- j. Prepared and presented statewide charter school law presentations to FSBA, FSBA/FADSS, and The Florida Bar Education Law Certification Committee.

School Police:

This year, the SBAO's in-house attorney designated to assist School Police in legal matters continued to serve as the Department's liaison. The SBAO assisted in the revision of existing Standard Operating Procedures within the Department regarding

personnel matters, the use of recording devices and use of force. The SBAO also provided School Resource Officers (SROs) with FDLE-required training in advanced criminal law and procedure, and post-academy orientation on important legal issues to new resource officers. The SBAO handled duty calls from SROs requesting assistance in school-related issues and provided legal review and advice to School Police regarding proposed contractual arrangements with other agencies, and Public Records Requests.

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 SBAO has been actively providing legal services to the School Police in the drafting of its 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, SBAO 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. These policies have become a model for other school Districts throughout Florida.

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 the School Board meet its strategic goals.

- a. The SBAO continues to assist in the negotiation of management and facilities agreements with District-managed charter schools operating in District properties.
- b. The SBAO continues to provide legal advice to the District regarding the implementation of the Interlocal Agreement relating to Head Start and Early Head Start Programs with Miami-Dade County, the Professional Services Agreement with Teach for America, Inc. regarding Race to the Top Grants, and numerous contracts relating to multiple grants.

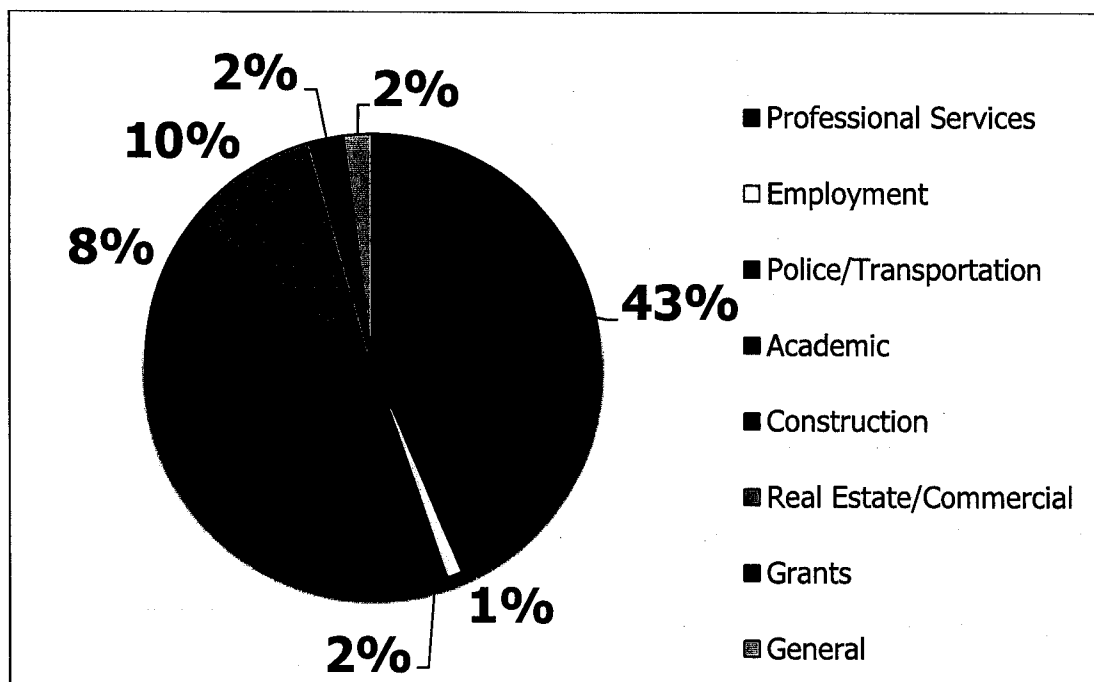
- c. The SBAO continues to assist the District in the implementation of school concurrency and the Interlocal Agreements for Public School Facility Planning in Miami-Dade County with Miami-Dade County and municipalities; review of covenants and providing legal representation in real estate closings.
- d. The SBAO provided legal advice and assistance regarding the development of a legal framework for implementation of Public School Concurrency, including the drafting and legal review of Developer Mitigation Agreements establishing proportionate share mitigation banks and purchase and sale of capacity credits.
- e. The SBAO provided legal advice regarding developing a District-managed charter school in the City of Doral, including the drafting of multiple unprecedented agreements, such as the Multi-Party Agreement, the Impact Fee Covenant, and performing review of title, the real estate closing and re-platting of the School Site, Project Management Agreement, Ground Lease, Charter School Management Agreement and Charter Contract.
- f. The SBAO provided legal services and advice relating to Lease Agreements, Access Agreements, Easements, Covenants and other land use matters including the negotiation of a Consent Agreement with The Department of Regulatory and Economic Resources, Division of Environmental Resources Management (DERM).
- g. The SBAO provided legal services and advice on the School Board's Standard Charter School Contract and the new Virtual Charter Standard Contract.
- h. The SBAO provided legal services concerning at least 35 new charter contracts and amendments, including several District managed or operated charter schools.
- i. The SBAO continues to provide legal services and advice to the District relating to procurement matters including the Agreement for Contracted Services relating to Student Accounting Systems, Web Hosting and Software Licensing Agreements.
- j. The SBAO has provided extensive legal assistance to District staff regarding the 21st Century Bond Program including drafting ethics policies

and forms, drafting the Small/Micro Business Enterprise and Minority and Women-Owned Business enterprise policy and certification procedures, and has attended all meetings and provided legal advice to the 21st Century Bond Advisory Committee and its members. The SBAO have also provided extensive legal assistance to the Office of Economic Opportunity and the SBE Advisory Committee.

In addition, the SBAO continues to provide legal review of all standard form contracts. The response time concerning these 901 standard contracts remains robust (average of 0.5 to 1.0 days) since 2009. A total of 1,360 contracts were drafted and reviewed between July 1st, 2013 and April 30, 2014.

CONTRACT 07/01/2013 thru 04/30/2014

1360 CONTRACTS

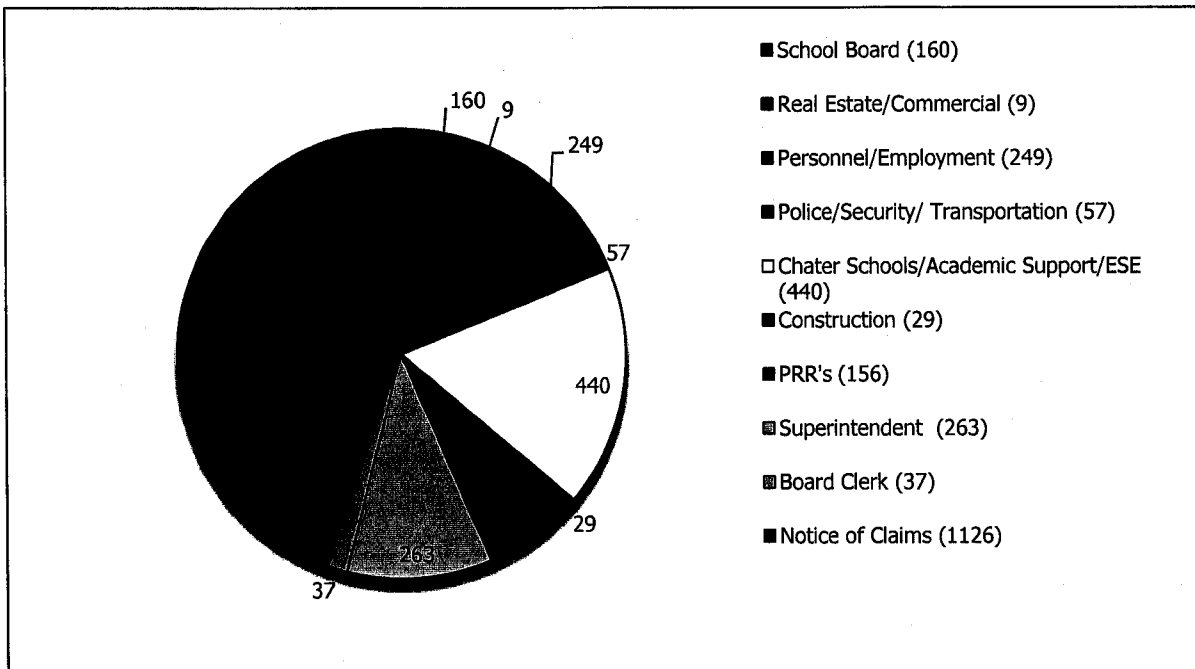


Referrals and Requests:

The SBAO handled 2526 requests/referrals from the School Board, Superintendent and other Departments:

Referrals 07/01/2013 thru 04/30/2014

2526 Referrals (Breakdown)



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 200 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 District 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. Since the entire Policy Manual was rewritten, effective July 1, 2011, the SBAO has assisted staff in the review and/or drafting of approximately 157 policies, manuals and procedures, and approximately 21 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, referrals, 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 grown over the last year, and the office has increased its capacity to respond to those requests and referrals quickly.

OTHER MATTERS

Criminal Restitution:

The SBAO has also worked on behalf of the District to recover restitution in a federal and state criminal matter. Through the coordination of the SBAO, the Audit Department and Payroll, a former employer agreed to forfeit benefits, representing a substantial savings for the District.

The Pilot Trademark and Licensing Program:

A. State Trademarks

In 2013, the District initiated a pilot program for licensing and branding school logos and merchandise. In February 2014, the SBAO filed the necessary documents in support of the District's Pilot Trademark and Licensing Program, saving thousands of dollars for the District. Since then, the SBAO has received Certificates of Registered Trademarks from the Florida Department of State for all 18 pilot schools.

Based on the success of the SBAO filings, the trademark and licensing program was expanded to include all the remaining high schools. On May 30, 2014, Trademark Registration Applications were filed with the Florida Department of State for 12 additional high schools. On June 6, 2014, Trademark Applications will be filed with the Florida Department of State for the remaining 23 high schools in the District.

B. Federal Trademarks

The School Board currently owns federal trademark registrations for VPrep, iPrep, Mast Academy, and WLRN, in part as a result of recent filings by the SBAO. The SBAO is currently pursuing a federal trademark registration for the Miami-Dade County Public School logo. Also, the SBAO has filed federal trademark registration applications for four widely recognized and popular high school athletic programs in the pilot program.

Awards and Recognitions:

The School Board Attorney has become a Registered Parliamentarian (RP), the first RP to ever serve in the SBAO. In addition, three attorneys, (the School Board Attorney and two Assistant School Board Attorneys) are Florida Bar Board certified as specialists/experts in Education Law. In addition, several attorneys are recognized as statewide legal experts in their practices and routinely provide more than half of the lectures and materials for Education Law Certification courses 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 South Florida Legal Guide's Top Lawyers, Top Lawyers in Florida, the Super Lawyers and The Legacy Legal Leader Award recognition (published in a special section of the Miami Herald).

In addition, the School Board Attorney was re-appointed by Chief U.S. District Court Judge Federico Moreno to serve on the United States Magistrate Selection Panel, and the Board Attorney was appointed to a select group of attorneys to the United States District Court Steering Committee for the 2014 Bench and Bar Conference which was held in Miami Beach and was attended by approximately 800 judges and attorneys. 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 seminars on legal topics and the Black History and Hispanic History Symposiums hosted by Federal District Court for the Southern District of Florida.

OFFICE COMPOSITION, FUTURE GOALS AND COMPENSATION

As indicated, the District's legal work has been handled by the SBAO in a competent and professional manner as evidenced by the high degree of success in litigation and other matters. With the support of the School Board, the organization of the SBAO has had a dramatic impact, leading to financial savings and favorable outcomes for the District. The organization chart for the SBAO is attached.

In order to meet the challenge of retaining experienced attorneys and support staff (paralegals) with our District, the School Board approved a revised salary schedule in April 2013. The implementation of this schedule has been cost-neutral and within the School Board Attorney's Office's budget. The attorneys remained on annual contracts with a managerial exempt benefits package.

RECOMMENDED:

That The School Board of Miami-Dade County, Florida accept the June 2014 Annual Report of the School Board Attorney.

ORGANIZATIONAL CHART 2014

