Office of School Board Members
Board Meeting of January 14, 2015

January 14, 2015

Ms. Raquel Regalado, Board Member

SUBJECT: **LITIGATION FILED BY UNITED TEACHERS OF DADE**

COMMITTEE: **INNOVATION, GOVERNMENTAL RELATIONS, AND COMMUNITY ENGAGEMENT**

LINK TO STRATEGIC FRAMEWORK: **STUDENT, PARENT AND COMMUNITY ENGAGEMENT**

On December 5, 2014, United Teachers of Dade, on behalf of its members and Karla Hernandez-Mats, a teacher and resident of Miami-Dade County, filed a complaint, attached hereto, against Defendant Carlos A. Gimenez in his capacity as Mayor of Miami-Dade County.

As this Board has discussed on various occasions, Miami-Dade County's ad valorem property tax revenues make up a substantial portion of funding for Miami-Dade County Public Schools (M-DCPS) and the well documented delay in the appellate process under the Value Adjustment Board (VAB) is hurting our students and teachers. Currently, the VAB is two years behind and has repeatedly missed the statutory deadlines which have in turn prevented M-DCPS from levying the prior period funding adjustment millage rate provided by Florida statute, causing M-DCPS to experience an additional year of delay in receiving cash necessary to support its operating budget.

For close to two years, M-DCPS staff has been meeting with Miami Dade County officials to resolve this issue. Furthermore, M-DCPS made the resolution of this issue its number one legislative priority in the 2014 legislative session. And while M-DCPS received support from our local legislative delegation, the issue was deemed a 'local' and 'unique' one to Miami-Dade County that should be solved at the county level. This Board has repeatedly expressed its appreciation to staff for their diligence in regards to the resolution of this issue and has commended the Superintendent for his execution of the priorities set by this Board which have consistently included and remained the resolution of the VAB issue for the benefit of our residents, partners, students, teachers, and parents.

Following the end of the 2014 legislation session and in good faith, this Board authorized the Superintendent, through our audit department, to allocate M-DCPS resources to audit the VAB process. Said audit is ongoing but with a cumulative loss of over $171 million in 2011-12. Furthermore, the current projected net loss for the 2013 tax year is $64 million dollars, there are presently no reforms being considered by Mayor Gimenez's administration and the 2015 legislative session is just months away.

This litigation presents an issue of first impression which involves statutory and contractual obligations since presently, the arrangement between Miami-Dade County and M-DCPS is that Miami-Dade County pays 60% of the administrative costs for the

property appeal process and M-DCPSs pays 40%. Moreover, this Board has on several occasions discussed the amount paid to Miami-Dade County in light of the two year delay and its statutory and contractual obligations to resolve the issues with the VAB.

Deleted

Given these facts, it is imperative that the necessary actions to remedy the issue be formally declared by the Board. The required actions include: (a) Continue to seek appropriate legislative remedies, especially the elimination of the 1% per month interest provision and/or amend the law to also offer the 1% to owners who resolve their appeal with the property appraiser office; (b) Seek local and state remedies to close loopholes that allow continuing delays in the VAB hearing process; (c) Seek legislative change permitting school districts to budget at 95% of expected tax revenue rather than 96%; (d) Seek to eliminate the two-year delay in the close out of the final certification of the tax roll; (e) forge an agenda going forward to ensure that a backlog is not recreated once the current one is cleared (f) within 60 days draft, negotiate and enter into a contractual agreement with the necessary parties for the collection of property taxes which will set measurable expectations and consequences for failure to meet the same in the future which will protect our teachers and students and provide us with relief including but not limited to attorney's fees for breach of said performance contract.

Added

Deleted

Finally, due to the lack of action by several parties to create procedural changes to date, and the impact that the filing of the UTD lawsuit has had on said inaction this item requests a legal opinion from the School Board's Attorney's office regarding the School Boards independent litigation options in terms of claims and parties which shall be provided to this Board 20 days from the passage of this item. This item also directs the School Board Attorney 20 days from the passage of this item to provide three recommendations for outside counsel that can represent the Board in this litigation. Given the different entities involved in this matter and the need to inform the School Board regarding the same this item also requires that the School Board Attorney's office inform the Board by memorandum on the legal and/or policy actions taken by Miami-Dade County and/or the VAB on all matters related to this issue.

Added

ACTION PROPOSED BY MS. RAQUEL REGALADO:

That The School Board of Miami-Dade County, Florida:

1. Pursue action as follows: (a) Continue to seek appropriate legislative remedies, especially the elimination of the 1% per month interest provision; (b) Seek remedies to close loopholes that allow continuing delays in the VAB hearing process; (c) Seek legislative change permitting school districts to budget at 95% of expected tax revenue rather than 96%; and (d) Seek to eliminate the two-year delay in the closeout of the final certification of the tax roll; (e) forge an agenda to ensure that a backlog is not recreated once the current one is cleared; (f) negotiate and enter into a contractual agreement with the necessary parties for the collection of property taxes which will set measurable expectations and consequences for failure to meet the same in the future.
2. Seek legal action as appropriate to expedite a lasting resolution to this matter. If legal course is recommended, the Board should be notified and legal representation from outside counsel considered.

Revised

Filing # 21267737 Electronically Filed 12/05/2014 08:54:06 AM

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

UNITED TEACHERS OF DADE; and KARLA HERNANDEZ-MATS,

Plaintiffs,

v.

CARLOS A. GIMENEZ, in his capacity as Mayor of Miami-Dade County,

Defendant.
_____/

GENERAL JURISDICTION DIVISION
CASE NO.:

COMPLAINT

COMES NOW, Plaintiffs, UNITED TEACHERS OF DADE (hereinafter "UTD"), on behalf of its members, and KARLA HERNANDEZ-MATS, by and through the undersigned counsel, and file this Complaint against Defendant CARLOS A. GIMENEZ, and aver as follows:

PARTIES

1. Plaintiff UTD is a labor organization, as defined under Fla. Stat. § 447.02, that may maintain any action or suit, pursuant to Fla. Stat. § 447.11. UTD is the certified collective bargaining representative of over 20,000 educators, support professionals, school clericals, and security monitors employed by Miami-Dade County School Board (hereinafter the "School Board" or the "School District"), pursuant to Fla. Stat. 447.307. The School District serves over 350,000 students within the County, 92.3% of whom are minorities, and all of whom deserve and have a constitutional right to a high quality system of education.

2. UTD members as referenced herein are Florida residents.

3. Plaintiff KARLA HERNANDEZ-MATS is a teacher, resident, and taxpayer of Miami-Dade County, whose rights under Article IX, Section 1 of the Florida Constitution are being violated by Defendant.

4. Defendant CARLOS A. GIMENEZ is the Mayor of Miami-Dade County. As Mayor, he is the head of the County government, responsible for the management of all administrative departments of the County government. Miami-Dade County Code, Part I, Art. 2, Section 2.02. He is also responsible for preparing the County budget, including capital budgets, operating budgets, and funding of both the Property Appraiser's Office and the Value Adjustment Board, as more specifically outlined below. *Id.* at Art. 5, Section 5.03; Fla. Stat. § 125.85(2). Defendant Gimenez is statutorily required to "supervise the collection of revenues," including the tax revenues necessary to fund the School Board. Fla. Stat. § 125.85(5). As a "strong mayor," he holds the authority to veto any action of the Commission within ten days, including any budget. Miami-Dade County Code, Part I, Art. 2, Section 2.02.D.

NATURE OF ACTION

5. At the heart of this case is public education, a fundamental value enshrined in Florida's constitution and its history. Throughout this state, public school districts receive funding based on a formula established by statute. Fla. Stat. § 1011.62. This statutory amount is what the Florida Legislature and the Board of Education have determined to be adequate to fund a high quality public education. Within Miami-Dade County, the School Board, its teachers and staff members are all working with the limited resources they have to provide the best education to the students they serve. To be able to achieve their mission, they need the amounts determined as adequate by the Legislature. However, as a direct result of a Defendant Gimenez's underfunding and understaffing of the Value Adjustment Board process in Miami-Dade County, Plaintiff School

Board is losing the necessary statutory funding. Because of Defendant's actions, the public education system within Miami-Dade County is not receiving what it should be according to the Legislature and the Board of Education, a *de facto* violation of Article IX, Section 1 of the Florida Constitution. Plaintiffs need intervention from this Court to right this wrong.

6. Plaintiffs seek declaratory relief from Defendant's violations of Plaintiffs' rights under the Florida Constitution, including the right to a high quality public education system, a fundamental value guaranteed to the citizens of this state.

7. Plaintiffs also seek the equitable remedy of a writ of mandamus, which is within the jurisdiction of the Court.

8. Plaintiffs have no adequate remedy at law.

JURISDICTION AND VENUE

9. The actions complained of herein occurred in Miami-Dade County, Florida.

10. All conditions precedent to bringing this action have been performed, excused or waived.

11. Venue is appropriate in Miami-Dade County, Florida as Defendant resides in Miami-Dade County and the cause of action accrued in Miami-Dade County. Fla. Stat. § 47.011.

FACTS

The Florida Constitution Makes High Quality Public Education A Priority.

12. Since its inception in 1838, the Florida Constitution has contained an education article. In 1998, by a vote of 71%, Florida's citizens approved a constitutional amendment that imposed stringent requirements for the public education system. Art. IX, § 1, Fla. Constitution. By this amendment, the citizens of this state made clear that education is a "fundamental value" and a

paramount duty of the state," and provided standards by which to measure the adequacy of the public school system. *Bush v. Holmes*, 919 So. 2d 392, 403 (Fla. 2006).

13. Specifically, Article IX, Section 1 of the Florida Constitution states the following:

> The education of children is a fundamental value of the people of the state of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education.

14. To meet the constitutional standard, the state must meet each of the enumerated standards—"uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education." Art. IX, § 1, Fla. Const.; *see also Bush v. Holmes*, 919 So. 2d at 404 (holding that the constitutional education clause "impos[es] a maximum duty on the state to provide for public education that is uniform and of high quality").

15. As Justice Overton wrote, "This education provision was placed in our constitution in recognition of the fact that education is absolutely essential to a free society under our governmental structure. . . . [E]ducation is the key to unlocking the door to freedom and keeping it open and . . . this constitutional provision was intended to do just that." *Coalition For Adequacy And Fairness In School Funding, Inc.*, 680 So. 2d 400, 409, 410 (Fla. 1996) (concurring opinion).

16. According to the Supreme Court, the Florida Constitution "requires that a system be provided that gives every student an equal chance to achieve basic educational goals prescribed by the legislature." *St. John's County v. Northeast Fla. Builders Ass'n, Inc.*, 583 So. 2d 635, 641 (Fla. 1991).

17. Defendant's actions have denied and continue to deny Miami-Dade County's 350,000 students an equal chance to achieve their basic educational goals.

Miami-Dade County Leads the State in VAB Delays, Taking Money and Resources from the Classroom.

18. Despite the constitutional mandate to provide high quality public education, the School District, its students, teachers, and educational support professionals are being financially deprived as a result of Defendant Gimenez's actions with respect to the Value Adjustment Board ("VAB") process in Miami-Dade County, and the loss of desperately needed tax dollars.

19. The VAB process allows taxpayers to contest the value of real estate and property as assessed by the Property Appraiser's Office.

20. Because Miami-Dade's ad valorem property tax revenues make up a substantial portion of funding for the School District's public education system, delays and understaffing in the VAB process directly affect the School District's budget and cash flow.

21. For example, the School Board closes its fiscal year on June 30 of each year. Because of the backlog in the VAB process, the School Board is forced to prepare its budget without the benefit of knowing how much revenue is anticipated. Instead, because of the Mayor's underfunding and understaffing of the VAB process, the School Board only receives the Property Appraiser's tax roll estimate, a projection that includes unrealized property tax revenues.

22. In addition, the longer the appeal through the VAB, the less money the School Board has in its operating budget. Specifically, the Department of Education establishes a millage rate based on property tax values provided by the Department of Revenue. Fla. Stat. § 1011.62. This requires the Property Appraiser to submit completed tax rolls for a prior year's valuation by July 1 of each year, which cannot be done until the VAB has completed all hearings for the period. As a result of Defendant's understaffing and underfunding of the VAB process, the VAB is two years behind and repeatedly misses the deadline. This prevents the School District from properly and timely collecting revenues necessary to support its operating budget, as required by statute.

The school systems throughout Florida's other counties are able to properly and timely collect funds through the VAB process.

23. Defendant has directly caused the School District to lose the funds established by statute as adequate. As of the 2011-2012 school year, the School District suffered a cumulative loss of over $171 million. **The numbers continue to grow, with a projected net loss of $64 million dollars from the 2013 tax year alone.** These are staggering losses for the financially strapped School District, which directly lead to a loss of resources from the classroom, in violation of Article IX, Section 1.

24. For example, in a School District where 60% of students speak a primary language other than English at home, programs for English language learners are losing resources and teachers.

25. Defendant Gimenez is also reducing the funds available for special education—an area that is protected under federal law—in a School District where over 53,000 students are enrolled in Exceptional Student Education courses. As a result of Defendant's actions, special education classes are being staffed with fewer paraprofessionals to assist students with disabilities or other impairments. Fewer classrooms are being self-contained, because Defendant has reduced the resources available to devote to students who need special attention.

26. In addition, the loss in funds caused by Defendant Gimenez has impacted schools' libraries. Throughout the School District, many libraries are now being staffed with clerks rather than the trained Media Specialists who are certified to assist students with reading, research, and other specialized tasks. Defendant's actions are putting literacy at stake, in violation of Article IX, Section 1. *See Coalition for Adequacy & Fairness in School Funding, Inc.*, 680 So. 2d at 409 (concurring opinion) (emphasizing that the Florida constitution requires "the establishment of an

educational system that fulfills the basic educational needs of citizens in this state to provide a *literate, knowledgeable* population") (emphasis added).

27. Compounding the issues, class sizes are increasing because of the inability to hire teachers and educational support professionals—the greatest inputs to a high quality public education system. As a result of Defendant's actions, the School District is losing the ability to attract and retain educators. This is unacceptable and unconstitutional.

Rather than Speed up the Process and Get Money to the Students, the Mayor Underfunds the VAB.

28. The Defendant Mayor knows that the delay in the VAB process directly reduces the funding of the public education system.

29. As the County's chief executive officer and head of the County government, Defendant Gimenez is responsible for preparing the County's budget. The Mayor has a constitutional obligation to submit a budget that properly funds and staffs the processing of appeals of property valuation.

30. Instead, Defendant is underfunding and understaffing the Value Adjustment Board process, thereby increasing the delay in collections and reducing the funds received by the School Board. As a result of Defendant's actions, Plaintiffs' rights under Article IX, Section 1 of the Florida Constitution have been and continue to be abridged.

31. Defendant has caused Miami-Dade County's VAB—which lacks consistent processing criteria and procedures—to be among the slowest and least efficient in the state. In the spring of 2014, there were over 11,000 cases pending before the VAB, which had not even begun to hear appeals for the 2013 tax year. The final certification of the 2011 Tax Roll was not completed until June 11, 2013. As a result of the lag in the VAB hearings, the final certification of the 2012 Tax Roll was not completed until May 28, 2014. **This two-year delay is at the expense**

of the students, teachers, and educational support professionals of Miami-Dade County Public Schools.

32. Defendant's understaffing and underfunding of the VAB process has also put the County at a disadvantage in properly combating tax challenges through the VAB. For example, because of insufficient resources, cases are being settled in bulk at a discount—without full regard to merit—causing a loss to the County's taxpayers, to the School District, and to the Plaintiffs.

33. Defendant Mayor has previously been given actual notice of the detrimental impact of his actions, including notice from representatives of the School District.

34. Still, Defendant has failed to appropriate sufficient funds for the VAB process. Although representatives of the School District, the City of Miami, and the City of Hialeah sought to address the issue at the state level during the last legislative session, legislators in Tallahassee have deemed the VAB issue to be a problem that is "unique" to Miami-Dade County, which must be resolved at the local level. Defendant has failed to do so.

35. Despite the repeated two-year lag in the VAB process in Miami-Dade County, Defendant has failed to increase the resources provided to the Value Adjustment Board to allow for prompt and timely collections, thereby preventing the School District from receiving the funding determined by statute to be adequate.

36. On the contrary, the Mayor has repeatedly decreased the staff and the budget allocated to the Value Adjustment Board process. For example, in 2012-2013, there were 79 budgeted positions within the Property Appraiser's Office to handle the challenges to assessment values before the VAB. This number decreased to 75 in the 2013-2014 fiscal year, with a proposed reduction down to 68 budgeted positions in the current proposed budget. **This is a 13.9% decrease in staff, in just two years.**

37. Similarly, the Mayor's Budget for Value Adjustment Board Appeals and Legal decreased from $5.977 million in the 2012-2013 fiscal year, to $5.528 million in the current proposed budget—a 7.5% decrease in funding.

38. To make matters worse, Defendant did not hire sufficient special magistrates to conduct valuation hearings pursuant to Section 194.035, Florida Statutes. Rather than ensure timely compliance with the statutes required to receive adequate funding, Defendant's actions and mismanagement have increased the VAB backlog, thereby reducing the funds available to the School District and depriving Plaintiffs of their constitutional rights.

39. This is inexplicable, particularly where Defendant Mayor is aware that Miami-Dade has by far the greatest number of VAB petitions filed within the state. For example, as per the Department of Revenue's May 2014 Performance Audit, Miami-Dade County petitions constituted over 62% of *all the filings within the state*. This number is disproportionate to County's relative size within the state.

40. In addition to the sheer volume of filings, Defendant has knowledge of several practices that warrant a greater allocation of resources to the VAB to properly combat tax "free riders" and allow for timely collections. For example, Defendant is fully aware of the unique practice within Miami-Dade County of agents "trolling" property tax records for cases to take before the VAB, often without the property owners themselves even being aware of petitions filed. Similarly, Defendant is aware that signatures of homeowners are not even required to file a petition, adding to this "trolling" problem. With this knowledge, Defendant should be increasing the resources provided to the VAB, so that the School District can receive the necessary funds per statute. Instead, *he is doing the exact opposite.*

41. In sum, Defendant has set up an understaffed, underfunded VAB process that is failing. This is causing the students, teachers, educational support professionals, and taxpayers of the School District to lose necessary resources and state funding established by statute to be adequate. Defendant has caused a *de facto* inadequate provision for public education, in violation of the Florida Constitution.

42. The children of the Miami-Dade County public school system are being illegally shortchanged by the Mayor's actions. Whereas students in other districts throughout the state are not losing money as a result of delays in the VAB process, Defendant is depriving the students of this County of an equal chance to achieve the basic educational goals prescribed by the Legislature.

COUNT I: DECLARATORY JUDGMENT

The Plaintiffs incorporate paragraphs 1 through 42 by reference, as if fully set forth herein.

43. The Florida Constitution provides that the education of children is a fundamental value, and that the state has a paramount duty to make adequate provision for the education of all children residing within its borders. Art. IX, § 1(a), Fla. Const. Pursuant to the Constitution, there shall be adequate provision for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education. *Id.*

44. As the chief executive of Miami-Dade County, Defendant Mayor has a paramount obligation to the students, parents, teachers, and educational support professionals of the County to ensure the School District is adequately funded. The citizens of Miami-Dade County established a "strong mayor" form of government, further underscoring Defendant's role as chief

executive. The Defendant was a leading advocate for the establishment of this "strong mayor" model, and yet refuses to exercise his mandates as chief executive.

45. By underfunding and understaffing the Value Adjustment Board process, Defendant is cutting off funds that should be received by the School Board from the State Legislature, thereby causing a denial of Plaintiffs' rights to have an adequate provision for education under the Florida Constitution.

46. Through the underfunding and understaffing of the Value Adjustment Board process, the Mayor has violated Article IX, Section 1 of the Florida Constitution.

47. Plaintiffs have a bona fide, actual, present practical need for a declaratory relief, based on the present and ascertainable controversy caused by the Mayor's actions.

48. Plaintiffs' rights under Article IX, Section 1 of the Florida Constitution are at stake.

49. The paramount interests in this case are properly before this Court.

COUNT II: MANDAMUS

The Plaintiffs incorporate paragraphs 1 through 42 by reference, as if fully set forth herein.

50. A writ of mandamus lies to enforce an established legal right by compelling public officers to perform a ministerial duty required by law.

51. As a government official, Defendant Mayor has an indisputable and nondiscretionary obligation to include adequate funding within the County's proposed budget for the Value Adjustment Board process, which directly affects the adequacy of public education within the School District. Mandamus is the appropriate remedy to compel this legally mandated action.

52. Plaintiffs have a clear legal right to the performance of this legally mandated action, including a right under Article IX, Section 1 of the Florida Constitution.

53. Plaintiffs do not have an adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays for relief and judgment as follows:

1. To declare that Defendant violated Plaintiffs' constitutional right to a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education;
2. To issue a writ of mandamus ordering Defendant to appropriate sufficient funds in the budget to adequately fund and staff the VAB Process, such that the School Board can receive the funds established by statute as adequate; and
3. Grant such other relief as this Court deems appropriate.

Dated: December 5, 2014

Respectfully Submitted,

PHILLIPS, RICHARD & RIND, P.A.
9360 SW 72 Street, Suite 283
Miami, Florida 33173
Telephone: (305) 412-8322
Facsimile: (305) 412-8299
Email: mrichard@phillipsrichard.com

By: */s/ Mark Richard*
Mark Richard, Esquire
Florida Bar No. 305979