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Office of Superintendent of Schools
Board Meeting of July 15, 2015

July 6, 2015

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

SUBJECT: ANNUAL REPORT TO THE BOARD
COMMITTEE: PERSONNEL SERVICES AND STUDENT AND SCHOOL SUPPORT
LINK TO STRATEGIC FRAMEWORK: FINANCIAL EFFICIENCY/STABILITY

REVISED

The School Board approved an overall restructuring of the School Board Attorney's Office ("SBAO") on October 14, 2009 to accommodate the District's present and future legal needs. Subsequently, the School Board Attorney has presented 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 as well as the progress of ongoing projects initiated by the School Board Attorney. An overview of significant cases and matters handled by the SBAO will also be detailed in this report.

OVERVIEW

Over the past six years, the SBAO has continued to manage requests, claims and casework assessing the overall workload of the office through the use of its document management database. According to the data collected, the SBAO continues to experience a substantially higher workload while responding to administrative requests efficiently. Records show that the SBAO has more than doubled its caseload in many areas while significantly reducing its costs. Therefore, more School Board resources can be allocated to the District's core function of educating children.

In addition, the SBAO has reorganized its functions to support District staff's delivery of high quality education at schools. Several attorneys and professionals have been assigned to work directly with Cabinet level administrators and departments. These dynamic teams of SBAO attorneys and District employees continue 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.

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HIGHLIGHTS

By developing a highly competent and specialized team of legal advisors, the SBAO continues to reach unprecedented records in the history of the District, among legal offices in the state and in the nation as a whole. Since the implementation of this specialized legal team, the SBAO has provided two to three times more legal services in various areas, while reducing the costs of legal services to record lows. The cost savings amounts to 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

SBAO's mission statement:

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.

Our program "Serve with Passion, Creativity and Excellence" establishes relationships with administrators' offices, schools, and programs to learn about their operations. In addition, the attorneys give lectures at various schools throughout the District, including working with moot court teams in countywide and statewide competitions. The SBAO provides internship opportunities for high school students to learn and gain an understanding of the legal field. 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 six years, the SBAO has conducted and hosted several important seminars, lectures, workshops and presentations on various legal topics to 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 the Florida Commission on Ethics to allow public officials to meet their requisite four hours of ethics training. This course was also certified by the Florida Bar for continuing legal education requirements. In addition, several judges and attorneys have provided lectures for continuing legal education. This office also hosted a seminar by a lead tort attorney from the County Attorney's Office concerning the handling of litigated cases. 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 that can be accessed on the SBAO website: <http://attorneys.dadeschools.net/index.asp>. This office intends to continue to host and present similar seminars and professional development presentations to develop its expertise and understanding of laws concerning K-12 Education.

Additionally, the SBAO hosted an Intellectual Property Seminar that provided guidance to District staff on best practices concerning trademarks and enforcing intellectual property rights. Our office is also coordinating a seminar with Schools Police to educate them on Florida statutes regarding counterfeiting, enforcement policies and procedures when confiscating counterfeit merchandise, and providing trademark enforcement services at major sporting events.

Since the District's comprehensive revision of its School Board Rules, the SBAO continues to collaborate with District staff to develop new policies and update current policies routinely and after each Legislative session. Our School Board Policies serve as a model for other school boards in a variety of areas. 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.

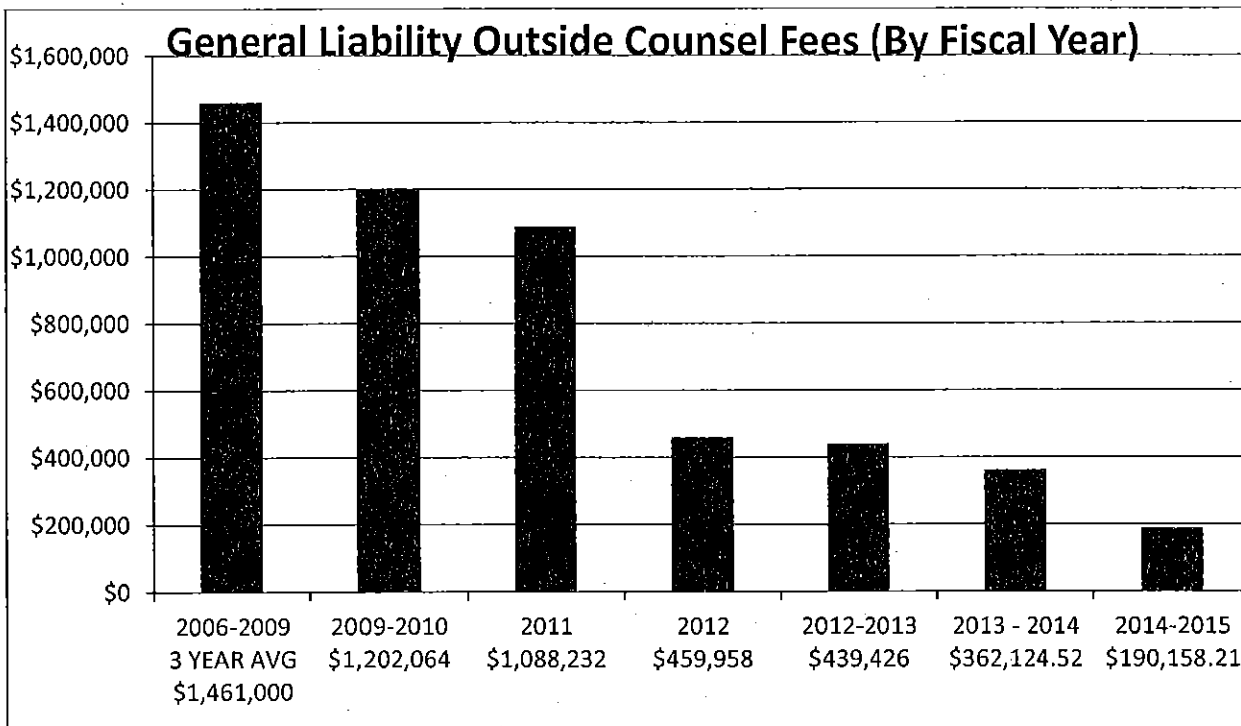
FINANCIAL EFFICIENCY AND STABILITY

The majority of SBAO's legal practice involves providing legal guidance and representing the School Board, the Superintendent and District staff with the most effective and efficient legal service in issues involving the School Board. Below are the specialty areas with a brief summary of the SBAO's legal service:

Tort/General Liability

The SBAO defends the majority of all general liability claims filed against the District for claims seeking monetary damages for personal injuries, errors and omissions and damage to property. With the SBAO's approach of minimizing the utilization of outside counsel for the Board's legal needs, costs and fees paid to outside counsel have significantly dropped and continue to create cost savings for the District. Since July 1, 2014, a total of 192 notices of claims have been processed by the SBAO, and 53 general liability lawsuits have been filed against the District, all of which are being defended by the SBAO in-house attorneys.

During FY 2014-15, the SBAO managed contracts for legal services on an as-needed basis with pre-approved attorneys and firms in various specialized legal fields at specified hourly rates. However, no new general liability claims have been outsourced and, as a result, outside counsel legal fees remain at the lowest amounts in recent history. The SBAO also works closely with Gallagher Bassett Services (the District's third party claims administrator) which is responsible for investigations, evaluations, negotiations, and if appropriate, settling tort claims. This includes the early involvement of SBAO in the investigation for the purpose of securing necessary witness statements and key evidence. The SBAO continues to close litigated cases at favorable terms either through judgments of dismissal, settlements or appeals.



* - Annualized

Total includes attorney's fees and expenses

Construction

Under the direction of the Board, the SBAO worked with Facilities staff to recover funds through the assertion of claims, and closed a number of projects on terms favorable to the District. We continue to collaborate seeking innovative ways of substantially reducing costs in the areas of facilities, construction and land use. A successful ruling from the courts clarifying the School Board's sovereign immunity prohibited municipalities from arbitrarily and unilaterally imposing various inspection fees and storm water fees on school districts. In addition, the SBAO worked with District staff to resolve several construction claims and other matters consenting payments, construction bonds, defects, bid protests and code enforcement issues.

A further example of SBAO efforts to reduce ongoing costs in the areas of facilities, construction and land use is illustrated through revisions of construction-related form contracts in 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 construction and professional service form contracts of the District, including, but not limited to the Miscellaneous CM-at-Risk, Architect/Engineer, and Building Code Consultant, and Surveying Services agreements.

In addition, in spite of the significant increase in construction due to the GO Bond, 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 \$81,551.33 from July 1, 2014, to May 30, 2015, 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	\$ 415,647.14
2014/2015	8	\$ 81,551.00*

* This is an annualized figure for the 2014-2015 FY Year. This includes invoices through June 26, 2015.

Transportation

For the past year, the SBAO has been working closely with the District's Transportation Director, the Florida Department of Transportation (Sunpass), the Miami-Dade Expressway Authority, and District staff to resolve countless Miami-Dade Expressway Authority toll violations assessed on District vehicles. While the violations were not proper, the fees for using the expressway were, and the District was liable for these charges. After numerous discussions regarding the existing fees and past violation assessments, these issues were remedied through an agreement in which the SBAO was able to exclude the penalties and fines, and limit the amount due to only usage fees to the District from November 1, 2004, up to January 1, 2015; effectively saving the

District hundreds of thousands of dollars in legal fees, overage fines and collection charges.

The mutually agreed-upon amount for pending fees paid by the District was \$61,694.18, rendering the Board in complete satisfaction of any debt owed to Miami-Dade Expressway from November 1, 2004, up to January 1, 2015.

The combined efforts of the SBAO, the District's Transportation Office, and the Homeless Education Program combined efforts assures that the District complies with the McKinney-Vento Act to provide transportation to homeless students. In addition, the SBAO is assisting the Department in drafting its revised and guidelines and in simplifying and consolidating its various Transportation manuals.

Personnel and Labor

During fiscal year 2014-2015, 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, 2014, the three in-house personnel and employment attorneys handled forty-four (44) cases in state and federal courts and at the Division of Administrative Hearings (DOAH), through trials, dismissals or settlement. The distribution among all tribunals was as follows:

State and Federal	21
DOAH	22
EEOC	1

Twenty-two of these cases have been closed, which included the completion of ten (10) evidentiary hearings or trials before DOAH; and the closing of four (4) federal cases.

During the same period, the SBAO conducted:

Legal Reviews	244
Response to Referrals	84
Duty Calls	696

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 2014-15 the SBAO provided extensive legal assistance to the Office of Risk and Benefits Management in efforts to identify and reduce fraudulent insurance claims against the District's self-insurance program, and in the implementation of safeguards to minimize future fraudulent claims. The SBAO has also

assisted staff in the preparation and processing of RFPs for the District's employee health insurance plan, third party administration of the District's workers' compensation and liability program, and transparency tool for healthcare plan analysis.

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 issues 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 2014-2015, the SBAO continued to assist various departments such as the Office of Innovation and Accountability, the Office of Academics and Transformation, 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. In 2014-2015, the SBAO worked with staff in handling fifty-two (52) administrative cases, one (1) federal case to the United States Court of Appeals, and one (1) state court case on special education matters. The SBAO continues to work closely with the ESE department to address cases within the statutory 45-day timeline. The SBAO has worked with ESE staff to streamline information for these fast-tracked cases by making fillable forms for the convenience of the schools.

This year, the SBAO participated in Section 504 training for School Psychologists and conducted sessions on legal topics at the ESE Summer "Bootcamp" Training for Assistant Principals and the Alternative Education "Bridges" symposium. 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. The SBAO has also assisted staff in rolling out procedures and forms for comprehensive legislation in the areas of special education and curriculum, including new diploma options. In addition to assisting on matters involving K-12 students, the SBAO has assisted School Operations/Adult Education in bringing forth name changes for adult vocational centers to become known as "technical centers" and has provided guidance to a statewide committee on new compliance requirements for obtaining funding for disabled adult students.

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, domestic violence restraining orders, academic accountability, extra-curricular activities, student discipline, school assignments, student rights and special education/accommodations.

Charter Schools

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 and protects the School Board's interests. The following illustrates the extensive assistance provided during FY 2014-15 in charter application reviews, terminations, legal opinions, contract negotiations, and other legal matters relating to charter schools:

Review of Charter Applications	38
Board Items	10
Charter contracts, including new, renewals and amendments	52

Legal advice and written opinions were provided to Charter School Support, School Operations and to the Chief Auditor. Legal assistance was also provided for investigations involving charter schools, compliance, drafting notices, opinions and items regarding new state rules related to charter schools.

The SBAO also handled three (3) charter school terminations; eight (8) charter application denials to the State Board of Education, and one (1) administrative hearing in DOAH related to a Charter contract dispute. The SBAO participated in statewide meetings and conference calls related to implementation of legislation and the new state-required standard charter contract and presented on statewide charter school law to FSBA, FSBA/FADSS, and The Florida Bar Education Law Certification Committee.

School Police

The SBAO's designated in-house attorney continues to assist School Police in legal matters and served as the SBAO's liaison. The SBAO assisted in the revision of existing Standard Operating Procedures 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. This FY, the SBAO filed and litigated petitions for forfeiture of contraband seized by Schools Police during criminal investigations. 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 and participated in several seminars and presentations at the District and throughout the legal community which 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. This year, the SBAO provided a variety of trainings for principals and other staff, including the legal implications of applying the Code of Student Conduct and due process in schools. The SBAO also provided extensive legal assistance during this year's Attendance Boundary Change Process.

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.

- The SBAO continues to assist in the negotiation of management and facilities agreements with District-managed charter schools operating in District properties.
- 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.
- 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.
- 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.
- 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.

- 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).
- 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.
- 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 has 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 607 standard contracts remains robust (average of 0.5 to 1.0 days) since 2009. A total of 1,604 contracts were drafted and reviewed between July 1, 2014 and June 26, 2015.

Referrals and Requests

The SBAO prides itself on its efficient relationship with school site and District administrators. This interaction with staff comes in the form of referrals, public records requests, and duty calls. Duty calls are often phone calls, faxes, and emails to our office regarding various school operations and student matters. These inquiries range from student contact cards to legal guidance pertaining to issues such as subpoenas.

During FY 7/1/2014 thru 7/26/2015, the SBAO handled:

Board Member Referrals	145
Superintendent Referrals	322
Public Records Requests	205
Duty Calls	2,852
Creditor Rights/Garnishments	338

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

- 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.
- 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

- 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 223 policies, manuals and procedures.
- 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

The Pilot Trademark and Licensing Program

The School Board endorsed a District Pilot Trademark and Licensing Program to protect the value of our District and school brands, as well as generate additional revenue to enhance opportunities for our schools and students. The School Board Attorney's Office (SBAO) filed the necessary documents for trademark registration and licensing, saving thousands of dollars for the District. In furtherance of this effort, the SBAO is pleased to announce that it has secured rights to 63 state and federal marks.

The SBAO has also taken action to stop trademark infringement and prevent others from exploiting our marks by beginning litigation, sending cease and desist letters, and pursuing notices of opposition with the USPTO against entities that attempt to register trademarks that infringe on our intellectual property rights.

The SBAO is negotiating trademark co-existence agreements with trademark owners with similar trademarks as ours, so all parties can use their trademarks for marketing purposes without interfering in each other's enterprises, and are negotiating agreements with entities to ensure that our intellectual property rights are protected to receive royalties and licensing fees from companies that use our marks.

AWARDS AND RECOGNITIONS

The School Board Attorney is the first Registered Parliamentarian to ever serve in the SBAO. He, along with two Assistant School Board Attorneys, is certified by the Florida Bar Board 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, Instructional Materials, Student Discipline and Special Education. Several professionals in the SBAO have received statewide recognitions and awards.

The Board Attorney has an "AV Preeminent rating (Highest Possible Rating in both legal ability and Ethical Standards)" by Martindale-Hubbell. He 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).

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 the Federal District Court for the Southern District of Florida.

OFFICE COMPOSITION, FUTURE GOALS AND COMPENSATION

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, with the goal of greater flexibility to provide competitive salary adjustments for those SBAO employees that perform at a level that exceeds expectations. The attorneys remain on annual contracts with a managerial exempt benefits package.

RECOMMENDED: That The School Board of Miami-Dade County, Florida accept the July 2015 Annual Report of the School Board Attorney.

