

Office of Superintendent of Schools
Board Meeting of March 9, 2015

March 7, 2016

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

**SUBJECT: REQUEST APPROVAL OF SETTLEMENT IN MATTER KNOWN AS:
 PENDING CLAIMS – The School Board of Miami-Dade County,
 Florida, against Maxim Healthcare Services, Inc.**

At its Board meeting of October 1, 2013, the School Board of Miami-Dade County Florida (“Board”) approved Agenda item G-4 (“Authorization to File Lawsuit Against Maxim Healthcare Services, Inc. to Seek Recovery of District Funds Issued as Payment for Invoices Submitted by this Vendor to the District as a Result of Billing Errors and Irregularities”). Agenda Item G-4 authorized the School Board Attorney’s Office (“SBAO”) “to seek recovery of funds issued as payment for invoices submitted by the vendor to the District as a result of billing errors and irregularities, and any other remedies *as may be permitted by law*” (emphasis added). The SBAO presented this agenda item after having reviewed the investigative findings issued by the Office of Management and Compliance Audits (“OMCA”) with regard to the contract for respiratory services between Maxim Healthcare Services, Inc. (“Maxim”) and the Board. The audit was conducted at the request of the Superintendent.

In its audit, OMCA used an extrapolation methodology from selected samples and arrived at an estimation of disputed billings relating to the contract. Prior to the conclusion of the OMCA’s investigation, Maxim refunded the Board a total of \$99,612.00. Almost half of the overpayment estimated by OMCA in its audit resulted from the asserted failure on Maxim’s part to meet certain contract stipulations. The remedy for this type of non-compliance was the right to terminate under the terms of the contract. The Board exercised this remedy on October 19, 2011 after prevailing against Maxim’s Petition for Review of Administrative Order in the Third District Court of Appeals in Maxim Healthcare Services, Inc. v. Miami-Dade Public Schools, Case No. 3D11-2456. With regard to the remainder of the audit, the SBAO identified certain items under which the Board would be able to legally recover. This matter was ultimately mediated before the Honorable Retired Eleventh Circuit Chief Justice Joseph Farina.

This agenda item is presented for the Board’s consideration to approve the tentative settlement of \$325,000.00 to the Board in full and final settlement of any claims it may have had or could have with respect to this matter. In accordance with the terms of the

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tentative settlement agreement, the tentative settlement must be approved by March 31, 2016.

This item does not appear on the published Agenda. There exists good cause to vary from the published Agenda in order to timely effectuate the prescribed terms of the tentative settlement by March 31, 2016. Approval of the tentative settlement is in the Board's best interests, and will obviate the need for further legal actions by the Board. District staff and the OMCA are in agreement with the tentative settlement.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, approve the tentative settlement and accept \$325,000.00 in full and complete settlement and resolution of its claims against Maxim Healthcare Services, Inc. and authorize the School Board Attorney to execute and file all necessary documents to finalize the settlement.