

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

SUBJECT: ANNUAL REPORT TO THE BOARD AND REQUEST TO EMPLOY ADDITIONAL ATTORNEY

COMMITTEE: PERSONNEL SERVICES AND STUDENT AND SCHOOL SUPPORT

LINK TO STRATEGIC BLUEPRINT: EFFECTIVE AND SUSTAINABLE BUSINESS PRACTICES

As your School Board Attorney, I regularly present to the Board an Annual Report highlighting the legal work and overall performance of the School Board Attorney's Office (SBAO). I am very proud of the work of the office dedicated and talented staff who work diligently, consistently, and responsibly to provide the highest level of legal advice and representation to the School Board.

OVERVIEW

The SBAO caseload continues to increase in many areas. At the same time, as detailed in this report, the SBAO has significantly decreased the District's outside legal costs by effectively utilizing its in-house representation and advocacy.

The SBAO is fully committed to the District's goal of Student Achievement as outlined in "Vision 20/20, 2015-2020 MDCPS Strategic Blueprint," concentrating its efforts on the five pillars: Effective and Sustainable Business Practices; Highly Effective Teachers, Leaders & Staff; Safe, Healthy & Supportive Learning Environment; Informed, Engaged & Empowered Stakeholders; and Relevant, Rigorous & Innovative Academics. The SBAO works collaboratively with Cabinet level administrators and departments to be more effective in serving and protecting our students.

HIGHLIGHTS

Record Low Legal Cost Savings

The SBAO continues to reduce the District's legal costs to record lows amounting to several million dollars annually as detailed in the report below.

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Advocacy And Compliance

- **Special Education Amicus Brief to US Supreme Court:** The SBAO participated in a working group formed by the Council of Great City Schools that formulated the Council's Amicus Brief to the United States Supreme Court in *Endrew F. vs. Douglas County School District*, a case in which the high court will reconsider the applicable standard for a free appropriate public education under the Individuals with Disabilities Education Improvement Act. This case could have far-reaching implications in expanding the responsibility of school districts for educating students with disabilities.
- **Fair Labor Standards Act Rule Development:** The SBAO provided extensive legal advice to the District in developing the final rule revising the Fair Labor Standards Act (FLSA). The FLSA establishes minimum wage, overtime pay and overtime exemptions for certain job categories affecting employees in private and government sectors. The final rule revised the overtime regulations and updated the salary and compensation levels required for various overtime exemptions. The SBAO consulted with numerous departments within the District and analyzed the District's job descriptions and pay grades to ensure compliance with the revised standards set forth in the FLSA, protecting the District from incurring liability under the FLSA for individual and collective action claims.
- **Child Care Development Block Grant Act:** The SBAO has been instrumental in assisting the District in complying with a new law enacted by the federal Child Care and Development Block Grant Act (CCDBG), which prescribes health and safety requirements for child care providers, including new Florida laws implementing governing screenings, licensing and inspections that became effective on July 1, 2016. Complete compliance is required by the District in order for it to continue to receive its School Readiness funding. The SBAO researched and analyzed the new federal and state laws and regulations and has served as the District's liaison to the Florida Office of Early Learning and the Department of Children and Families (DCF). The SBAO has assisted in drafting compliance procedures related to the employment of new hires and current employees who are within the scope of the laws.

Zika Crisis Management

The SBAO assisted the Superintendent's Office and other District departments in creating procedures related to: (a) the distribution, possession and application of bug repellent by students and employees; (b) potential alleged workers' compensation claims by infected employees; (c) employment leaves of absence and/or requests for transfers by pregnant employees and/or employees trying to conceive; and (d) temporarily revising school site uniform policies to permit long sleeve shirts and pants to protect against the virus.

Presentations

The SBAO is regularly requested to present at conferences and professional organizations. In the last six months, SBAO attorneys were retained to present at:

- National Conference of the National Association of Charter School Authorizers (NACSA), Atlanta, Georgia, "*Toeing the Legal Line*";
- Annual Joint Conference of the Florida School Boards Association (FSBA)/Florida Association of District School Superintendents (FADSS)/Florida School Board Attorneys Association(FSBAA), Tampa, FL, "*Status of Transgender Law in K-12 Public Education*"; and
- Quarterly Conference of the Florida School Board Attorneys Association (FSBAA), Gainesville, FL, "*Intellectual Property Law Update*."
- The School Board Attorney gave keynote address at the South Florida Executive Roundtable, Miami, FL, "*A View from the Office of the General Counsel*."

Trainings

The SBAO attorneys also provide trainings on a regular basis and upon request on a variety of issues.

- Attorneys provided multiple trainings to school administrators on compliance with special education /Section 504 issues through Synergy 2016.
- Over 15 trainings were provided in conjunction with District staff on transgender law and related issues to administrators and counselors through Synergy 2016 and other meetings.
- SBAO provided a basic contracts training to the Academics Department.
- An SBAO attorney has become a Diversity & Inclusion "Certified Trainer" who will facilitate interactive training presentations to District employees on the School Board's Business Diversity Commitment and Initiatives.
- SBAO attorneys provided training on the sunshine law, public records and ethics laws to the Attendance Boundary Committee (ABC), the Diversity Equity and Excellence Advisory Committee (DEEAC), and the Charter School Application and Contract Review Committees.

Trademark and Licensing Program

The SBAO has now registered over fifty (50) school trademarks on behalf of the Board since the inception of the program in 2014. This year, the SBAO continues to enforce trademark use through cease and desist letters and entering into contracts with vendors and has negotiated and entered into arrangements with various entities for the use of the Board trademarks.

In addition, the SBAO has assisted in drafting the rules and regulations for the District's new logo contest as well as the Intellectual Property Assignment Agreement for the logo assignment for the winning logo.

Collaborative Partnerships

The SBAO provides significant legal assistance and guidance to staff involved in the District's development of multiple collaborative partnerships with other government entities to provide greater access to educational opportunities to students and parents, including, but not limited to, drafting and recommending a new policy to the Board to enable public-private partnerships and unsolicited proposals to increase the Board's flexibility and reduce the costs of construction.

Policy Updates

Within the last six months, the SBAO provided substantial assistance to District staff of multiple departments in recommending to the Board three (3) new policies, amendments to four (4) policies and revisions and repeal and replacement of the travel procedures and property control procedures manuals. These new policies and amendments were required to incorporate and comply with new U.S. Department of Education (DOE) regulations providing "uniform grant guidance" addressing the federal grant application process. The Board approved the new policies and revisions in October, 2016.

In addition, the SBAO is currently facilitating the Board's annual review of policy revisions by assisting the Superintendent and Cabinet in recommending two (2) new policies and sixteen (16) policy amendments to the Board for its consideration. These new policies and amendments reflect new statutory provisions or recommended District practices in the areas of Curriculum, School Operations, Facilities, Personnel, and Community Relations.

PILLARS

EFFECTIVE AND SUSTAINABLE BUSINESS PRACTICES

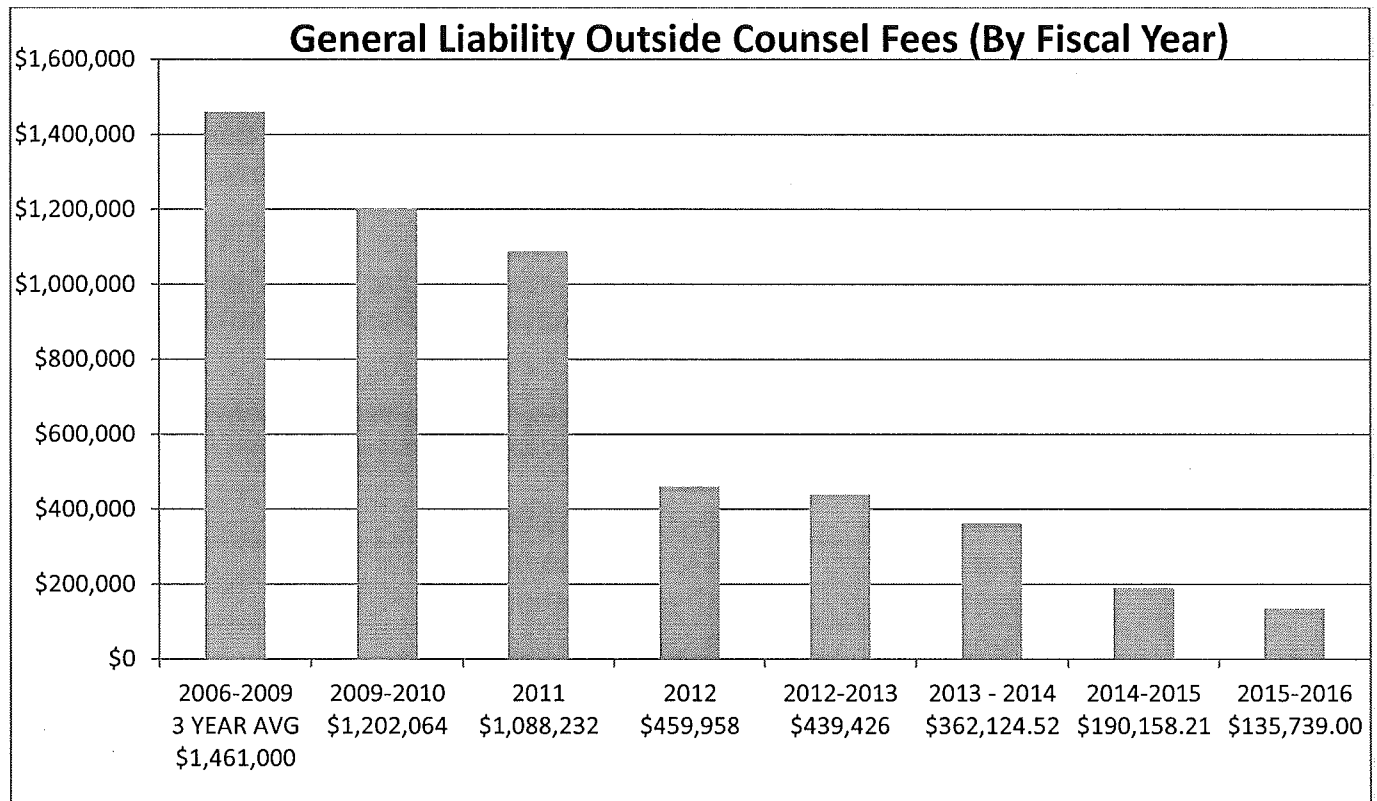
The SBAO represents the School Board, the Superintendent and District in general business issues involving the District and School Board.

General Liability/Tort

The SBAO attorneys continue to handle (in-house) the vast majority of all general liability claims (claims seeking monetary damages for personal injuries and property damages). At present, the attorneys are handling 123 lawsuits that have been filed against the District. This represents approximately 97% of all litigated claims. The SBAO also supervises claims assigned to outside attorneys. There are currently 4 litigated matters involving specialized areas of legal practice assigned to outside attorneys.

In addition, since April 1, 2016, 130 notices of claims (pre-suit notices of personal injury claims required by §768.28, F.S.) have been processed by the SBAO and 40 new general liability lawsuits were filed against the District. All notices of claims and new lawsuits are reviewed and analyzed by the SBAO.

The utilization of the SBAO in the defense of the many claims filed against the District continues to result in significant cost savings for the District. The SBAO's outside counsel legal defense fees continue to remain at historic lows. In addition, monetary payouts on tort and general liability claims have also remained low, leading to a reduction in tort and general liability claim reserves.



Construction, Real Estate, Planning and Facilities

The SBAO continues to assist District staff and community stakeholders to revise Board policies and procedures related to construction and procurement, as well as revising existing construction and professional service form contracts of the District, including the Miscellaneous CM-at-Risk, Architect/Engineer, and Building Code Consultant contracts. The SBAO will also be working closely with the Office of Procurement Management Services to provide assistance with the Contractor Disciplinary Review Committee.

The SBAO is actively assisting Facilities in developing a Guaranteed Energy Performance Contract that will ultimately fund capital improvements through energy saving initiatives. Once in effect, the construction project will be energy efficient and the District will utilize the stream of income from the savings to repay the costs of the

project, including the costs of the initial investment. This is a means of updating District facilities solely based on the savings from utilizing new energy efficient means.

The SBAO assists and attends the Goal Setting Committee Meetings, Contractor Prequalification Committee Meetings and the Small Business Advisory Committee Meetings, to ensure that Board policies are being properly implemented and obtain feedback from community stakeholders to assist with developing new policies. The SBAO is committed to working with the Office of Economic Opportunity, Office of Procurement Management Services and Office of School Facilities to develop policies and procedures to increase the participation of minority firms and vendors.

To ensure that staff and community members are aware of the new/revised construction policies implemented by the School Board, the School Board Attorney provided a presentation at the "On-Boarding Session" for new hires and at various committee meetings where members of the community were present. The SBAO participated in the Diversity Inclusion Training Program and now has an in-house attorney that is a Certified Trainer in Diversity and Inclusion.

Even with the increase in construction services necessary due to the General Obligation Bond Issues, the District's legal cost for claims and bid protests continue to reach historic lows.

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	9	\$ 81,551.00
2015/2016	12	\$ 35,595.94
2016/2017	8	\$ 61,716.40*

* April 1, 2016 – December 31, 2016

Transportation

The SBAO continues to provide legal assistance to the District's Department of Transportation and its staff in a wide ranging capacity. As always, the SBAO is actively pursuing recovery in any situation where a District vehicle was damaged as a result of third-party negligence. We have assisted in dealing with red light camera violations and

collaborating in the District's joining the "Fleet Program" of Miami Dade Expressway Authority (Sunpass), which will allow the District to better manage its Toll-By-Plate fleet accounts. In addition, the SBAO provides general liability and tort defense for this department.

Office of Risk and Benefits Management Support

The SBAO works closely with the Office of Risk and Benefits Management to minimize general liability and workers' compensation claim expenses. The SBAO provides legal support required for the operation of the District's insurance and self-insurance programs, including the issuance of RFPs, drafting of contracts, and legal compliance reviews of various insurance and employee benefits programs. For example, during the current fiscal year, the SBAO has provided legal assistance to the Office of Risk and Benefits Management in the implementation and renewal of the District's third party administration of employee benefits, 403b investment providers, and worker's compensation claims services RFPs. In addition, the SBAO has assisted the Office of Risk and Benefits Management in the development of policies and procedures regarding communicable disease (Zika mosquito borne virus), Florida Constitution Amendment 2 permitting restricted use of medical cannabis, and the prevention of insurance fraud. The SBAO also works collaboratively with the Office of Risk and Benefits Management staff to process and maximize recovery of funds for the District in insurance fraud investigations and claims, property damage, motor vehicle accident claims, and in healthcare plan subrogation claims brought against third parties.

The SBAO provides legal counsel to both District staff and Gallagher Bassett Services in the defense of litigated workers' compensation claims, and defends in-house litigated claims involving related legal issues in areas such as personnel, employment discrimination, and insurance subrogation. The SBAO also provides legal advice and recommendations on claims handling strategies in individual workers' compensation matters in order to control costs and prevent otherwise unnecessary litigation expenditures. The SBAO actively monitors and works closely with outside legal counsel on those workers' compensation claims identified as having a high financial exposure.

Contracts

The SBAO has updated all of the District's standard form agreements and uploaded them to the online District forms bank and continues to assist staff in ensuring that the Board's best interests are reflected in agreements. Agreements were finalized for: (i) the Summer Youth Internship Program; (ii) Construction Technology Training Cohorts at D.A. Dorsey Technical Center and at South Dade Technical College for the purpose of protecting the District from exposure to liabilities; (iii) The City of Sunny Isles Beach Address Verification Agreement; (iv) an Agreement with Nike; (v) an agreement with AG Youth Hospitality Project for the implementation of the Hospitality and Culinary Program at Miami Beach Senior High School which gives students who are interested in a career in Culinary Arts an opportunity to enroll in career oriented courses, and, (v) in collaboration with Miami Bayside Foundation, Inc. and the City of Miami drafted, negotiated and executed an Agreement for the Marine Service Technology Program at

Lindsey Hopkins Technical College to better educate the local workforce and assist in developing the maritime industry.

The SBAO continues to advise District staff and the Board on the negotiation of management and facilities agreements with District-managed charter schools, interlocal agreements, school concurrency, professional services, construction, academics, information technology, intellectual property and third-party service providers, including the drafting of agreements, performing review of titles and real estate closings and matters relating to procurement.

In addition, the SBAO continues to provide legal review of all standard form contracts. Since April 2016, a total of 1,135 contracts were drafted and reviewed. The average review turnaround time is 0.5 – 1 day on standard agreement forms and 0.5 – 2.5 days on non-form agreements.

HIGHLY EFFECTIVE TEACHERS, LEADERS & STAFF

Personnel Matters & Employment Litigation

While the SBAO continue to provide extensive legal advice and representation in employee disciplinary matters, as in previous years, there was an increase in the number of employee matters and cases handled by the SBAO. Since April 1, 2016, the three in-house personnel and employment attorneys handled thirty-eight (38) cases at different stages of litigation, including cases in state and federal courts and matters before the Division of Administrative Hearings (DOAH). From pre-litigation defense through pre-trial dismissals, summary and final judgments, trials, appeals, and settlements, the interests of the District have been vigorously defended by the SBAO. The case distribution was as follows:

State and Federal	19
DOAH	12
Pre-Litigation Defense	7

In addition to reducing the District's exposure to liability in these matters through appropriate and efficient pre-litigation defense, thirteen (13) of these cases have been closed, which included the completion of five (5) evidentiary hearings or trials before DOAH and resolution of eight (8) cases before federal and state tribunals. During the same time period, the SBAO conducted:

Legal Reviews	202
Duty Calls	329

CIU Policy and Procedures Manual

As part of its role in providing counsel to the various District departments charged with dealing with employee disciplinary matters, the SBAO also provided legal counsel to the

District's Civilian Investigative Unit with respect to issues concerning the administrative investigative process.

District's Website Accessibility

In line with national efforts to enforce compliance with the Americans with Disabilities Act, the SBAO is currently providing extensive legal advice to staff and is communicating with the United States Department of Education, Office for Civil Rights (OCR) regarding the accessibility of the District's websites to students with disabilities. Additionally, the SBAO is researching the applicable regulations and guidelines to ensure that the District's website portal is accessible to all members of the community regardless of disability.

Unfair Labor Practice Charges

The SBAO assisted Labor Relations and its attorneys in their efforts to secure favorable rulings in two unfair labor practice charges filed by District employees alleging that the School Board and the United Teacher of Dade engaged in contract negotiations related to salary schedules that were contrary to state law. The first charge was dismissed prior to hearing, as the hearing officer found the employees did not have standing to make the charge. After the hearing pertaining to the second charge, the PERC hearing officer issued a recommended order holding that the salary schedule negotiations were not unlawful. The SBAO is prepared to further assist as needed should these rulings be contested or appealed.

RELEVANT, RIGOROUS & INNOVATIVE ACADEMICS

The Academic/ESE department is led by two of the Florida Bar's first Education Law certified attorneys. The SBAO continues to provide extensive representation and advice in matters involving the federal Individuals with Disabilities Education Act (IDEA) to resolve disputes involving students with disabilities. Since the last report to the Board, the SBAO has worked with staff in handling twenty-seven (27) administrative cases on special education matters before the Florida Division of Administrative Hearings. In one important case, the SBAO vigorously defended the practice of keeping testing protocols confidential and secured a result which is important for all Florida school districts. The SBAO challenged and deterred the issuance of attorneys' fees by a DOAH judge in a special education case, thereby preserving the requirement that fees must be sought in a court of law. The SBAO continues to defend special education cases in federal and state appellate courts.

The SBAO has continued to assist District staff with responses to complaints filed with the United States Department of Education, Office for Civil Rights (OCR) and the Florida Department of Education and in negotiating and implementing resolution agreements where warranted.

The SBAO once again participated in the Summer Synergy 2016 program, in conjunction with the staff from Exceptional Student Education, to provide training to

school administrators on compliance with special education/Section 504 matters. By invitation, the SBAO also participated in an information session with prospective special education teachers from Miami-Dade College.

The SBAO assisted the Curriculum and Instruction staff in reviewing and updating the Student Progression Plan. Similarly, the SBAO assisted staff of K-12 and Adult Education programs on reviewing new legislative and updating current Board policies, including fundamental changes to athletic transfer policies.

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 continues to protect the Board's interests regarding charter schools. In addition to providing legal assistance in drafting charter policy amendments, below is a synopsis of the assistance provided by the SBAO, in charter school application reviews, terminations, legal opinions, contract negotiations, and other legal matters relating to charter schools:

Review of Charter Applications	11
Board Items	5
Charter contracts, including new, renewals and amendments	35

The SBAO also provided extensive assistance in review and drafting amendments to the Board's Charter School Policy and assisted the Chief Auditor in its investigations involving charter schools by providing and seeking legal advice and written opinions. Legal advice was also provided on an almost daily basis to Charter School Support and School Operations.

Over the past year, the SBAO regularly participated in statewide meetings and conference calls related to implementation of new state legislation, proposed state rules, and other issues related to Florida and national charter school law.

SAFE, HEALTHY & SUPPORTIVE LEARNING ENVIRONMENT

The SBAO continues to give lectures at various schools throughout the District and provide leadership and guidance to moot court teams in countywide and statewide competitions. The SBAO continues to provide internship opportunities for high school students to gain experience working in an office and gaining a brief understanding of the legal field.

The SBAO has been active within M-DCPS legal programs acting as judges for moot court competitions and on occasion even offering constructive criticism for teams prior to competitions.

During this fiscal year, legal assistance was provided for four (four) individual student discipline cases. One case resulted in a due process hearing request in DOAH which was resolved prior to hearing.

The SBAO's designated in-house attorney assists School Police in legal matters and serves as the SBAO's liaison. The SBAO 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 officers. This year, the SBAO successfully litigated all of its outstanding petitions for forfeiture of contraband seized by Schools Police during criminal investigations and acquired title to multiple vehicles for use or auction by Schools Police. 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, Public Records Requests and court orders regarding the sealing and expunction of criminal records.

The SBAO collaborated this year with other departments, including the Office of Intergovernmental Affairs, Grants Administration and Community Engagement and Schools Police, to provide legal review of suggested legislative revisions. Proposed revisions to existing legislation aim to deter gun violence that occurs in schools and/or involve youth.

SBAO continues to work with the law schools at the University of Miami, St. Thomas University, Florida International University and Nova Southeastern University offering internships, externships and pro-bono opportunities. This partnership allows law students to work closely with practicing attorneys on a wide variety of legal matters while developing legal reading and writing skills in a practical setting.

INFORMED, ENGAGED & EMPOWERED STAKEHOLDERS

The SBAO served as Parliamentarian and provided legal assistance to the Attendance Boundary Committee (ABC) during this year's attendance boundary change process as well as to the Diversity, Equity, and Excellence Advisory Committee.

The SBAO provided multiple and varied trainings throughout the year to staff and collaborated with staff to update policies across almost every area of School Board operations. See Highlights Section of this Report for details.

The ethics training was presented again this year by the SBAO allowing the School Board and the Superintendent to fulfill the annual state-required four hours of ethics training. The School Board Attorney invited Ms. Virindia Doss, Executive Director, Florida Commission on Ethics, and Ms. Pat Gleason, Florida State Attorney General's Office, to present on Florida's ethics requirements and the sunshine law. In addition, the

office invited Mr. Richard Ovelman, Esq., a local legal expert on the First Amendment to discuss issues related to public participation in Board meetings. The SBAO 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.

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.

Since April 2016, the SBAO handled:

Board Member Referrals	143
Superintendent Referrals	255
Public Records Requests	111
Duty Calls	1,800+
Creditor Rights/Garnishments	229

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, he and 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. In addition, numerous attorneys in the SBAO are licensed to practice in multiple state jurisdictions as well as before the Federal Bar. 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. The Board Attorney also recently received a Certificate of Appreciation from the Circle of Brotherhood and several other community organizations.

The SBAO continues to participate in various community activities, including pro-bono activities at District schools, such as the law student seminars at local law schools on legal topics, and the Bench and Bar Committee. The School Board Attorney has served on several committees to select United States Magistrate Judges in the Southern District of Florida and was recently appointed by the Florida Governor to the 11th

Judicial Circuit Nominating Committee, a prestigious appointment to a committee that screens and recommends judicial candidates to the governor for appointment to the local bench.

OFFICE COMPOSITION, FUTURE GOALS, COMPENSATION
AND THE EMPLOYMENT OF ADDITIONAL ASSISTANT SCHOOL BOARD
ATTORNEY

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.

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.

This Item also seeks to employ an Assistant School Board Attorney – Litigation I. The SBAO has received over 80 resumes for the position and is currently interviewing. A copy of the resume, proposed contract, and references will be provided prior to the Board meeting.

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

- (1) accept the January 2017 Report of the School Board Attorney; and
- (2) approve the employment contract for an Assistant School Board Attorney – Litigation I.