

Dr. Lawrence Feldman, Board Member } Revised

**SUBJECT: EXHAUSTING ALL ELEMENTS OF NEGOTIATION AND JOIN LITIGATION CHALLENGING SPECIFIC PROVISIONS OF HB 7069 THAT RAISE CONSTITUTIONAL AND LEGAL ISSUES**

**COMMITTEE: ACADEMICS, EVALUATION AND TECHNOLOGY**

**LINK TO STRATEGIC BLUEPRINT: INFORMED, ENGAGED, AND EMPOWERED STAKEHOLDERS**

At the School Board Meeting of August 9, 2017, the School Board Attorney presented Agenda Item G3 for consideration by this Board. In part, Agenda Item G3 authorized the District to join litigation challenging those specific provisions of HB 7069 that raise constitutional and legal issues as soon as practicable. It also addressed (2) funding for the litigation be allocated from non-public funds not to exceed \$30,000 without additional school approval (3) the Board attorney would provide the Board with monthly updates (4) notwithstanding the power of the School Board Attorney to join litigation, all elements of negotiation would be explored and exhausted by the Superintendent and the School Board Attorney; and (5) when appropriate, approval from the School Board to initiate any individual litigation would be requested.

The Board, Superintendent and the School Board Attorney have worked collaboratively and individually to envision, explore and exhaust all elements of negotiation that would provide a reprieve, and, although the language expressly authorizes the attorney to join litigation notwithstanding this power, to date Miami-Dade County has not joined any pending existing litigation. The School Board of Miami-Dade County continues to act in good faith to bring a resolution and relief from unconstitutional provisions of HB 7069.

The Board has thus far, authorized correspondence to Governor Rick Scott, Senate President Joe Negron, and Speaker of the House of Representatives Richard Corcoran requesting a special session to address provisions of HB 7069 that curtail school board members' constitutional authority; the Office of Intergovernmental Affairs has proactively sought meetings with member of the Dade Delegation and other key legislators; the School Board has made this a priority issue in our State Legislative Platform which is receiving primary attention from our lobbying teams; most recently, a majority of the Board travelled to Tallahassee and met with members of the Dade Delegation and House Speaker Joe Corcoran to advocate for a resolution. I know several Board members, myself included, have written, called and met with our legislators to further the cause. These efforts by the Board and the District to advocate for a non-legal solution, even as neighboring districts have filed and joined litigation, are to be commended.

As shared with the Board in the School Board Attorney's Fourth Update Regarding HB 7069 Litigation Memorandum, a coalition of thirteen Florida School Boards (Coalition) filed a Complaint in the Circuit Court of the Second Judicial Court In and For Leon County, FL, on October 16, 2017. The thirteen School Board plaintiffs are Alachua, Bay, Broward, Clay, Duval, Hamilton, Lee, Orange, Pinellas, Polk, St. Lucie, Volusia, Wakulla. These counties have jointly filed for declaratory and injunctive relief raising a facial challenge to the constitutionality of portions of Chapter 2017-116, Laws of Florida, also known as HB 7069, on the grounds that these provisions undermine local control of public schools.

School Board Attorney Harvey's Third Update Regarding HB 7069 dated October 13, 2017, maintains that "There are essentially only two avenues to resolve these constitutional issues: (i) prompt legal action by a court of competent jurisdiction, or (ii) immediate legislative intervention."

Although the advocacy trip to Tallahassee left many board members heartened by the pledges of some legislators to address portions of HB 7069, it would be prudent for this Board to take stock of time sensitive elements of this issue, so that it may make a well informed decision prior to any action or lack of action leading to unintended consequences. Accordingly, it would be prudent for the Board to take action prior to February 1, 2018, as the most onerous financial implications for our District would begin to take effect immediately thereafter.

This agenda item proposes That The School Board of Miami-Dade County, Florida, its Superintendent and School Board Attorney continue to work to exhaust elements of negotiation and also establishes an agreed upon timeline within the legislative session to determine whether immediate legislative intervention will be made a priority; if immediate legislative intervention leading to direct relief from constitutional issues outlined in Agenda Item G3 fails to occur, the School Board Attorney would join the Coalition's litigation seeking declaratory and injunctive relief by no later than January 16, 2018.

This item has been reviewed and approved by the School Board Attorney's office as to form and legal sufficiency.

**ACTION PROPOSED BY**

**DR. LAWRENCE FELDMAN:** That The School Board of Miami-Dade County, Florida:

- (1) continue to explore and exhaust all avenues for negotiation to address the constitutional violations of HB 7069 which undermine local control of public education, as outlined in Agenda Item G3 of the August 9, 2017 School Board Meeting; and
- (2) direct the Attorney to join by January 16, 2018, the Coalition of thirteen Florida School Boards who have filed litigation, if no concrete, substantive and documented legislative solutions have been attained which correct the constitutional infringements on School Board Authority.