

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

**SUBJECT: ANNUAL REPORT TO THE BOARD**

**COMMITTEE: PERSONNEL, STUDENT, SCHOOL, & COMMUNITY SUPPORT**

**LINK TO STRATEGIC PLAN: EFFECTIVE AND SUSTAINABLE BUSINESS PRACTICES**

The School Board Attorney presents this annual report to the Board summarizing and highlighting the legal work and overall performance of the School Board Attorney's Office (SBAO). The School Board Attorney is very proud of the 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 has continued its commitment to the five (5) pillars of the District's 2021-2026 Strategic Plan *Infinite Possibilities*: Relevant, Rigorous & Innovative Academics; Safe, Healthy & Supportive Learning Environment; Highly Effective Teachers, Leaders & Staff; Informed, Engaged & Empowered Stakeholders; and Effective and Sustainable Business Practices.

The SBAO works collaboratively with the School Board, the Superintendent, Cabinet level administrators, District departments, and schools to be more effective in serving and protecting our students, and to safeguard the best interests of the School Board. The effects of the Coronavirus pandemic continued to linger into the 2021-2022 school year. The persistent impacts of the pandemic are also shown by the fact that although learning and working has resumed in-person, courts are still conducting their hearings through ZOOM or through other virtual means.

## **HIGHLIGHTS**

### **Advocacy and Compliance**

- Provided legal guidance to District staff with implementation of CDC guidelines in response to the COVID-19 pandemic and compliance with state and federal emergency orders, amendments to section 1002.20 Florida Statutes, CARES Act provisions, and application of ADA and FMLA during the pandemic
- Negotiated parameters to new Schools of Hope Performance-Based Agreements
- Provided oversight of litigation over facial-covering requirements in schools in both defensive and offensive postures, defending lawsuits internally and assisting outside counsel
- Monitored legislation involving parental rights in education and provided guidance to Division of Student Services in light of legal developments
- Continued oversight of litigation with the City of Aventura and charter school operator over property tax referendum proceeds
- Florida Legislation – Legal Analysis and Compliance Issues
- Reviewed and drafted complex Agreements and Transactions

### **Presentations**

Although attorneys in the SBAO are regularly requested to present at conferences and professional organization, due to the ongoing pandemic our attorney's participation in these presentations was curtailed. In the last year, SBAO attorneys were requested to present at:

- American Bar Association Section of State & Local Government Law
- The Florida Bar, Education Law Committee Exam Preparation Course
- The Quarterly Chat for SMBE and MWBE firms on Joint Ventures
- The Risk Management Society, Greater Miami Chapter
- Judicial Nominating Commission, "*Judicial Nomination Process and Procedures*;" various voluntary bar associations
- Annual Student Journalism Forum, discussing implications of law, social media and student rights
- Stetson University College of Law, 43rd Annual National Conference on Higher Education Law & Policy
- Guest lecturers concerning school law topics at local law schools, colleges, and high schools regarding various topics in Education Law
- Forums and seminars with local judges and attorneys regarding public schools and education law
- Florida Bar Education Law Committee

## **Internal Staff Trainings**

The SBAO attorneys also provide trainings for District staff and advisory committees on a regular basis and upon request on a variety of issues:

- Limiting Exposure to Workplace Liability During a Pandemic
- The Employee Disciplinary Process and Other relevant Topics
- Board Member & Administrative Assistant Training on Ethics & Board Governance
- SBAO provided training on the Sunshine law, public records, parliamentary procedure and ethics laws to the Secure Our Future Advisory Committee, School Health Advisory Committee (SHAC), Attendance Boundary Committee (ABC), Audit and Budget Advisory Committee (ABAC) the Diversity, Equity and Excellence Advisory Committee (DEEAC), The Small, Micro, Minority, Women and Veteran Business Enterprise Advisory Committee, the Family Community Involvement Advisory Committee, the Ethics Advisory Committee, the Twenty-First Century Bond Advisory Committee, the Secure Our Future Advisory Committee, the SBE/MBE and M/WBE Advisory Committee, and various task forces
- SBAO provided ongoing training with Student Services staff to District Counselors and others on various student-related issues

## **Trademark, Licensing and Copyright Programs**

The SBAO continues to ensure the legal protection of the District's marks. In pursuit of this, each of the District's High School marks has been re-submitted and accepted through the Florida Department of State several school marks and M-DCPS logo have been renewed with the U.S. Patent and Trademark Office granting the School Board a Declaration of Continued Use.

## **WLRN**

The SBAO continues to actively assist WLRN and its staff in a wide-ranging capacity. The SBAO continues to review, alter and approve all contracts created for WLRN. At the February 10, 2021, School Board meeting, a Board Item was approved awarding media management services to Friends of WLRN, Inc. subject to successful contract negotiations. Immediately following that award, the SBAO in conjunction with The Office of Communications and Community Engagement and special counsel began actively negotiating the Agreement. The negotiation process lasted over a calendar year with multiple weekly meetings and encompassed collaboration with a significant number of M-DCPS departments. The contract

negotiations successfully concluded in December 2021 with the full execution of the agreement taking place the following year.

### **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 and private entities to provide greater access to educational opportunities to students and parents, including, but not limited to, interlocal agreements, affiliating agreements and joint facilities use agreements with municipalities and local non-profits.

### **Policy Updates**

Within the 2021 calendar year, the SBAO, in consultation with the Superintendent's Office and Cabinet, facilitated the Board's annual review of policy revisions resulting from the 2021 legislative session, as well as Board and staff initiatives. The SBAO brought forth or assisted District staff in bringing forth forty-eight (48) policies for amendment or adoption in 2021. The policy revisions addressed a wide range of areas, including Board governance, strategic planning, school safety, business practices, student programs, assessment and achievement, school operations, student well-being, anti-discrimination, employment practices and community relations. During the process, SBAO also provided guidance to several District departments on interpreting and applying the legislation and policy amendments to the operation of District schools. The SBAO also provided a legal review of the comprehensive policies governing the Student Progression Plan, and the document outlining Special Programs for Exceptional Students.

## **PILLARS**

### **EFFECTIVE AND SUSTAINABLE BUSINESS PRACTICES**

The SBAO represents the School Board, the Superintendent, and the District in a variety of legal matters.

### **General Liability/Tort**

These include pre-suit notices of claims as well as lawsuits seeking monetary damages against the District for personal injury and property damage. During 2021, 116 pre-suit notices of claims (required by §768.28, F.S. prior to filing a lawsuit) and 45 general liability lawsuits were received and processed by the SBAO. The 116 pre-suit notices of claim and 45 general liability lawsuits received during 2021 represent a slight increase over the 109 pre-suit notices of claim and 42 general liability lawsuits received during 2020, presumably attributable to a gradual return to normalcy following the Covid-19 pandemic. Based on 2021 trends, we anticipate that the number of pre-suit notices and general liability lawsuits filed against the District will continue to increase during 2022.

At present, SBAO attorneys are defending in-house 86 lawsuits which have been previously filed against the District, a slight decrease from the 99 lawsuits defended by SBAO attorneys during 2020. This represents approximately 91% of all lawsuits presently pending against the District. In addition to handling lawsuits in-house, the SBAO supervises all lawsuits assigned to outside attorneys. During 2021 there were eight (8) litigated matters involving specialized areas of legal practice assigned to outside counsel. Of the eight (8) matters assigned to outside counsel, seven (7) involve extremely serious sexual assault lawsuits filed in United States District Court.

General liability outside counsel fees decreased substantially in 2021 to \$471,364 from \$961,688 in 2020, a 51% decrease. See Exhibit A. Of the \$471,364 in general liability outside counsel fees expended during 2021, \$88,622 is attributable to personal injury litigation. Significantly, this represents a 70% decrease over the \$295,793 spent during 2020 in outside counsel fees for defense of personal injury lawsuits. This is a direct result of SBAO attorneys now handling most personal injury lawsuits. The remaining general liability outside counsel fees expenditures are related to non-personal injury litigation involving specialized areas of legal practice such as the District's administrative law challenge to the Florida Department of Health rule regarding mask usage and defense of legal challenges involving distribution of the 2018 mileage levy referendum funds. This category of general liability outside counsel fee expenditures also decreased substantially to \$382,741 in 2021 from \$665,894 spent during 2020, a 42% decrease.

The utilization of SBAO attorneys in the defense of the numerous claims and lawsuits filed against the District continues to account for substantial cost savings to the District. Prior to the restructuring of the SBAO approved by the Board at its meeting of October 14, 2009, the District spent an average of \$1,400,000 annually in outside counsel fees. See Exhibit D, Attorneys' Fee Comparison attached. Absent some unforeseen circumstance, outside counsel fee expenditures during 2021 and beyond should continue this downwards trend.

### **Workers' Compensation**

Commencing in early 2017, the SBAO extensively expanded its in-house workers' compensation law practice. Presently, SBAO attorneys are handling in excess of 100 litigated workers' compensation claims that have been filed against the District. During 2021, forty-eight (48) new litigated workers' compensation claims were assigned to SBAO attorneys, a significant increase (> 30%) over those retained in-house over the preceding year(s). The SBAO was successful in bringing over 70 claims to closure during 2021 and presently represents the District in over 150 litigated and non-litigated workers' compensation matters.

The utilization of the SBAO in the legal defense of the numerous workers' compensation claims filed against the District each year has resulted in significant cost savings for the

District. Legal fees paid to outside workers' compensation defense counsel have decreased significantly since the inclusion of workers' compensation matters in the SBAO's in-house practice in 2017. Legal expenditures during the five-years preceding 2017 averaged of \$2,804,236 as compared to an average of \$1,662,557 per year during the past four years. See **Exhibit B**, Workers' Compensation Attorneys' Fees, attached. Much of the significant savings followed the hiring of Assistant Board Attorney Jeanette Guerrero Edwards on February 16, 2018. The significant savings realized by hiring Ms. Edwards as an in-house attorney currently allow for an upward adjustment of her salary within the parameters of the SBAO budget. Supporting documentation will be provided to the Board under separate cover.

### **Construction, Planning, and Facilities**

The SBAO assisted District staff and community stakeholders in revising Board 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 worked closely with the Office of Procurement Management Services to provide assistance with the Contractor Disciplinary Review Committee and prepare responses to bid protests filed against the District. The SBAO has assisted Facilities in developing its Guaranteed Energy Performance Program that will ultimately fund capital improvements through energy saving initiatives. Facilities goal in this regard is to make construction projects more energy efficient so that the District can utilize the stream of income from the savings to repay the costs of the project, including the costs of the initial investment. Facilities intends to update District facilities solely based on the savings from utilizing new energy efficient means, and the SBAO has provided legal support in that regard.

The SBAO assists and attends the Goal Setting Committee Meetings, Contractor Prequalification Committee Meetings and the Small/ Micro and Minority/ Women Owned, and Veteran Business Enterprise Advisory Committee Meetings, to provide legal assistance in the implementation of Board policies. The SBAO continues to be strongly committed to working with the Office of Economic Opportunity, Office of Procurement Management Services and Office of School Facilities in the development of 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 and 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 of claims and bid protests remained in line with historic lows when compared to expenditures from 2004-2009. The District spent approximately an average of about \$37,835.10 annually on outside counsel fees. See Exhibit C, Total Construction-Related Attorneys' Fee Expenditures, and **Exhibit D, Attorneys' Fee Comparisons**.

### **Real Estate and Complex Commercial Transactions**

During the period covered by this Report, the SBAO provided extensive support in the area of complex real estate transactions involving Board-owned properties, including ground leases, development agreements, interlocal agreements and related documentation, with the SBAO providing representation from contract negotiations thorough completion of task, as may be applicable. SBAO provided legal representation relating to several interlocal/interagency agreements with the County and municipalities; numerous joint use and facilities use agreements, including management and lease agreements, among which were those certain multipurpose Interlocal Agreements with Miami-Dade County relating to the installation of a Soundscape at Miami Arts Studio 6-12 at Zelda Glazer, which included that certain Interlocal Agreement for GOB funding to the School District in the Sum of \$850,000 for enhancement of the basketball courts on the Zelda Glazer campus.

The SBAO also provided legal support in the negotiation and drafting of agreements for public park spaces, such as a Master Joint Use Agreements with City of Hialeah and other municipalities to make designated city park sites and designated school sites located in the city available to both parties for educational and recreational use. The foregoing efforts also included a Joint Use Agreement with the Town of Miami Lakes which will include a proposed effort by the Town to fund, at an estimated cost of \$23,000,000, enhanced improvements of the site.

The SBAO also participated in the negotiation and drafting of agreements relating to providing parking for District initiatives known as Brickell Solutions, enhancing capacity in the Downtown area and expansion of said collaboration with Miami-Dade Public Housing and Community Development to include the Related Urban Development Group for the provision of expanded parking facilities at Southside K-8 Center and potential redevelopment opportunities at other locations.

Our office also provided legal assistance in that certain Master Solar License Agreement with Florida Power & Light to provide for the installation, at no cost to the Board, of an aluminum covered walkway with movable solar energy generating equipment at the new MAST @FIU Biscayne Campus High School.

In addition, our office continues to provide legal support relating to the School District's responsibilities as regulatory agency relating to school concurrency requirements in Miami-Dade County. As part of the foregoing effort, we attend and provide legal support during the

District's weekly review of Miami-Dade County Plat Agenda for the possible impact of residential development on public schools including ongoing representation relating to School Site and Educational Facilities Planning. During the period covered by this report, SBAO attended and participated at weekly meetings held in compliance with school concurrency, including all meetings among District staff, local governments and developers to discuss acceptable mitigation options for residential developments not meeting the Level of Service required under the terms and conditions of the Interlocal Agreement for School Facility Planning in Miami-Dade County ("ILA").

The foregoing has resulted, during the period covered by this report, in the negotiation of approximately 10 Public School Proportionate Share Mitigation Development Agreements pursuant to the ILA with total monetary proportionate share mitigation payment to the District of approximately 5 Million Dollars. Our office also led negotiations relating to outstanding F-7 Covenants on Sites which are in the process of being developed and which will result in substantial sums to be paid to the School District in voluntary contributions. In addition to the foregoing, SBAO has continued to provide legal guidance in the negotiations relating to the Interlocal Agreement relating to the subgrants from Miami-Dade County for Head Start and Early Head Start Programs operated by the School District as well as the negotiations of the corresponding Lease Agreement for the Portables used in the said Program.

We also assisted in the School District's lease agreements with the United Way. SBAO has provided legal guidance in those significant matters listed above as well as in eminent domain matters including that certain Offer of Judgment by FDOT of \$1,450,000 for the taking of School Board property for its expansion of roads adjacent to Hialeah Gardens Senior High School, another proposed taking by FDOT of the Board-owned property known as the Bus Depot located in Okeechobee Road and a proposed Agreement for Easement rights by Florida Power and Light ("FPL") where the School District is being offered full appraised value plus costs by FPL for said easement rights.

The SBAO continues to provide legal services and opinions regarding a variety of School Board financing arrangements, and also works with and assists District staff in the review and drafting of documents related to numerous partnerships with local municipalities, governmental and private entities, to improve the services provided to employees and students, such as the 20-1500 project involving the ten acre School Board Administration (SBAB) complex as well as a Master Plan which will inform the School Board's initiative.

As a result of the significant involvement of SBAO in-house counsel in these complicated real estate transactions (e.g., negotiation and drafting of contracts, ground leases and associated documents, conducting title examinations, rendering Opinions of Title, platting analysis, representation relating to regulatory compliance with school concurrency, etc.) substantial savings were realized and the risk of liability for the Board was substantially reduced. The SBAO continues to work diligently with District Facilities, Construction and Off-Site Department, Grants Administration, Early Childhood, Head Start and Early Head Start,

Intergovernmental Relations, Procurement staff and other departments on a number of projects considered by the District for possible recommendation to the School Board.

### **Transportation**

The SBAO continues to provide legal assistance to the District's Department of Transportation and its staff in a wide-ranging capacity. The SBAO remains an active legal advisor and participant in the Accident Review Committee, which examines every accident involving District vehicles. We continue to provide legal analysis of specific policy implications and statutory regulations, but also weighing liabilities for real time decisions that must be implemented by the Department. The SBAO reviews and approves all contracts for the rental of District vehicles, all contracts for the transportation of special needs and homeless students and has vigorously defended multiple breach of contract claims brought both by and against the District. The SBAO pursues recovery in any situation where a District vehicle was damaged as a result of third-party negligence. In addition, the SBAO provides general liability and tort defense for this Department.

### **Office of Risk and Benefits Management Support**

The SBAO provides extensive legal support to the Office of Risk and Benefits Management. This includes legal analysis and recommendations required for administration of the District's self-insured general liability and workers' compensation programs. Furthermore, the SBAO provided legal guidance for issuance of RFPs for various insurance products, the drafting of insurance and risk and safety contracts, and legal reviews to ensure compliance with applicable laws, regulations and contractual obligations. The SBAO also works 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. The SBAO also provides legal support and analysis of subrogation claims made against at fault third parties for the purpose of obtaining reimbursement of payment made by the District's self-insurance health care plan.

The SBAO further provides legal counsel to District staff and Gallagher Bassett Services and defends in-house litigated claims in areas such as general liability, workers' compensation, personnel, employment discrimination, and insurance subrogation. The SBAO provides legal advice and recommendations on claims handling strategies to reduce costs and prevent otherwise unnecessary litigation expenditures. SBAO attorneys are immediately assigned to work collaboratively with Gallagher Bassett Services claim representatives on all pre-suit claims involving alleged civil rights violations, discrimination, sexual assaults, battery, fatalities, or other serious claims having potentially high financial.

## **Contracts**

Based upon a review, we have determined that the SBAO has opened 2066 new contracts from January 1, 2021, to December 31, 2021. A substantial rise on contract review, doubling the amount from the previous year. This breaks down to approximately six (6) contracts per day or eight (8) contracts per business day, every business day of the last year. Each of these agreements are handled through the SBAO intake process, assigned to an attorney, drafted, reviewed/or and revised, and eventually routed by District staff.

As always, SBAO continues updating the District's standard form agreements to incorporate the requirements of laws, rules, and regulations. This remains evident as standard forms and agreements now are inclusive of additional terms in reference to COVID-19 or other force majeure situations. All revised forms are uploaded to the online District forms bank. Our office continues to assist District staff in ensuring that updated forms are used to ensure that the School Board's Policies are adhere to and its interests are protected through these agreements. Some of the significant agreements the SBAO assisted District staff in negotiating include: (i) School Nurses for all schools, including EMT's, paramedics, and firefighters; (ii) Cyber Security Enhancements; (iii) Apprenticeship Participation Agreement; (iv) CareATC Clinic Service Enhancement; (v) Mental Health Assistance Plan; (vi) Dual Enrollment and Articulation Agreements with Universities and Colleges; (vii) Bilingual Agreements with Spain and France; (viii) Numerous Programs with CareerSource, (ix) Cooperating Agreement with Miami-Dade County; (x) Renewed Agreement for Future Bound Miami Consortium; (xi) an Agreement for a Learning Management System Agreement; (xii) T Mobile 10Million Grant; (xiii) Alyssa's Alert Agreement for schools (xiv) Form Software and Enterprise Agreement and (xv) Youth Mental Health Awareness Agreements.

The SBAO continues to review every contract for prom, homecoming, senior breakfast and graduation for all District high schools. As always, the SBAO has drafted and reviewed contracts regarding filming locations and releases, television rights, sideline credentials, Royalty Trademark Agreements as well as contracts for travel for interscholastic tournaments for high school athletics.

The SBAO continues to advise District staff and the School 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 reviews of titles and real estate closings and matters relating to procurement.

## **Miami-Dade Schools' Police Department**

The SBAO continues to work closely with MDSPD in all legal matters. The SBAO has reviewed each of the current School Based Law Enforcement (SBLEO) agreements and advised MDSPD on new statutory requirements, policies, procedures and other matters

related to school safety and compliance with requirements set forth by The Office of Safe Schools and laws related to the Marjory Stoneman Douglas High School Public Safety Act. In addition, the SBAO has reviewed and advised MDSPD on collaborations with other local and statewide municipalities, especially regarding Mutual Aid Agreements. These agreements allow MDSPD to work with other law enforcement agencies for the overall safety and well-being of Miami residents and visitors. Overall, the SBAO has reviewed 37 contracts for MDSPD and worked on numerous other matters that require legal input on a day-to-day basis.

**HIGHLY EFFECTIVE TEACHERS, LEADERS & STAFF**

**Personnel Matters & Employment Litigation**

During the 2021 calendar year, the SBAO continued to provide extensive legal advice and representation to District staff regarding all employment matters including claims under Federal and State statutes as well as employee disciplinary matters. During this time, the three (3) in-house personnel and employment attorneys handled 14 personnel matters litigated before the Division of Administrative Hearings (DOAH) and handled by the SBAO. In addition, SBAO defended eight (8) employment cases in state and Federal court, from pre-litigation defense through trials, appeals, dismissals, summary judgment, or settlement. In each case, the interests of the District have been vigorously defended. The case distribution was as follows:

<b>State and Federal Litigation</b>	<b>7</b>
<b>Appellate</b>	<b>3</b>
<b>DOAH</b>	<b>10</b>

During the same period, the SBAO conducted extensive legal reviews for both the Office of Professional Standards (OPS) and the Office of Civil Rights Compliance (CRC), ensuring that District staff can be confident in making informed personnel decisions. The approximate numbers of reviews conducted were:

<b>OPS Legal Reviews</b>	<b>129</b>
<b>CRC Legal Reviews</b>	<b>214</b>
<b>ADA Legal Reviews</b>	<b>180</b>

**The Americans with Disabilities Act and The Family and Medical Leave Act**

Throughout 2021, the SBAO participated in the monthly American with Disabilities District Consultative Committee (ADA-DCC) meetings to assist staff in addressing employee requests for on-the-job accommodations based on an employee’s disability. Due to the COVID-19 pandemic, the ADA-DCC received an unprecedented number of applications for on-the-job accommodations. Some pandemic related requests continued into well in 2021.

The SBAO successfully defended a federal lawsuit brought by a former first-year physical education teacher alleging ADA and FMLA violations after she was terminated near the end of the school year for repeatedly leaving work early and arriving tardy. The court, upon the SBAO's motion to dismiss, held that the plaintiff failed state a cognizable ADA or FMLA claim due to her failure to communicate with her supervisors about her condition and her need for accommodations and medical leave. Each of her claims was dismissed with prejudice.

### **Pro Se Litigants**

In a case involving a pro se litigant, the SBAO successfully argued that the plaintiff did not and could not state claims of "perjury," "obstruction of justice," and "civil conspiracy" against the Superintendent and individual members of the Board for not enacting the plaintiff's proposed law or allowing her entry to the School Board Annex Building. The plaintiff's complaint, filed in federal court, was dismissed with prejudice on all counts. The court's ruling was affirmed in relevant part by the U.S. Eleventh Circuit Court of Appeals.

After the plaintiff re-filed these claims in the same federal court, the claims were again dismissed with prejudice and the plaintiff, upon the SBAO's motion, was prohibited from filing any lawsuits in that court in the future without first obtaining leave of court.

The SBAO also successfully defended several appeals in Florida's Third District Court of Appeal brought by a plaintiff who claimed damages after being arrested for trespassing on school grounds. In each of the plaintiff's approximately eight (8) appeals (which were consolidated), the appellate court agreed with the lower court that the plaintiff failed to state a claim.

### **Office of Professional Standards**

In order to better meet the District's needs, the SBAO participates in regularly scheduled Incident Review Team meetings so it can provide timely legal advice and guidance to administrators and District staff with issues of potential legal exposure.

The SBAO provided legal advice to OPS with its processing of fingerprint and criminal background screenings for applicants, including researching out-of-state criminal violations that impact Level 2 screening requirements. In addition, the SBAO worked closed with the Office of Civil Rights Compliance to develop and update their manual, associated School Board Policies and procedures for Title IX investigations in light of new, extensive federal regulations.

A representative from the SBAO also conducts high-level reviews of investigations of certain cases by the investigative units and regularly meets with District staff about these pending investigations as required by the Superintendent's revised investigations procedures described in the February 18, 2019 memorandum regarding Enhancements to Employee Training Investigation Protocols and Measures to Enhance Student Safety.

**RELEVANT, RIGOROUS & INNOVATIVE ACADEMICS**

The SBAO continues to provide extensive representation and advice in matters involving various student-related policies and procedures. The SBAO provides advice and representation to resolve disputes involving students with disabilities pursuant to the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973. The SBAO also handles various complaints and lawsuits alleging Title VI and Title IX discrimination, disciplinary issues, and other types of complaints and legal claims involving students. Since the last report to the Board, the SBAO has worked with the District staff in handling the following cases and pre-suit matters related to student-specific legal claims:

<b>Florida Division of Administrative Hearings</b>	<b>40</b>
<b>United States District Court</b>	<b>1</b>
<b>Pre-Litigation matters – Approximately</b>	<b>127</b>

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 assisted the Curriculum and Instruction staff in reviewing and updating the Student Progression Plan. Similarly, the SBAO continued to assist staff of K-12 and Adult Education programs in reviewing new legislative and updating current Board policies, including fundamental changes resulting from legislation.

SBAO attorneys provided ongoing legal assistance to the Mental Health, Student Services, ESE, and School Operations departments and school sites regarding Threat Assessment and Mental Health Team procedures and continued monitoring of bills proposed in this area.

The SBAO assisted the District Federal & State Compliance Office, Student Services Department and school sites with ongoing student records and registration issues, including specific student records, student records correction requests, and unique issues affecting homeless students and students receiving services from the Department of Children and Families and/or Department of Juvenile Justice. The SBAO continued to provide advice on magnet and other school choice programs.

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 student-related issues. Attorneys answer calls and written correspondence 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 provides extensive legal assistance related to charter schools in a variety of ways through charter school application reviews, legal opinions, contract negotiations, District charter management agreements, and many other legal matters relating to charter schools:

<b>Review of Charter Applications</b>	<b>5</b>
<b>Charter contracts, renewals, amendments, consolidations, and performance-based agreements</b>	<b>121</b>

The SBAO assisted the Chief Auditor and the staff involved in District charter management by providing legal advice and written opinions. Legal advice was also provided to Charter School Support and School Operations on all facets of charter school compliance and contracts, charter school program reviews and the processes required for additional Schools of Hope that have noticed intent to open in Miami-Dade County.

## **SAFE, HEALTHY & SUPPORTIVE LEARNING ENVIRONMENT**

For a number of years, the SBAO has provided extremely competitive internship opportunities to both high school students and law students. This program provides practical working experience in a legal office and helps these students gain a better understanding and foundation of the legal field as a whole. Although the SBAO internship programs were completely virtual and remote in 2020, the programs resumed in-person during fiscal year 2021.

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 School Board Attorney's Office served as Parliamentarian and provided legal assistance to the School Health Advisory Committee (SHAC), Attendance Boundary Committee (ABC) during this year's attendance boundary change process, the Diversity Equity and Excellence Advisory Committee (DEEAC), the Ethics Advisory Committee, Teacher Task Force, Contractor Prequalification Review Committee, Goalsetting Committee, 21st Century General

Obligation Bond Committee, the Secure Our Future Advisory Committee, the SBE/MBE and M/WBE Advisory Committee, and other Board advisory committees.

The SBAO coordinated the Board’s decennial redistricting effort between March and December of 2021 by advising the Board on legal redistricting principles, soliciting mapping consultants with expertise in redistricting, coordinating several public meetings throughout Miami-Dade County, convening two Board workshops, and creating an e-mail address for increased public comment. These efforts resulted in the Board’s adoption of Resolution 21-053 on December 15, 2021, delineating the residence-area boundaries of each district for the next ten years.

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 the highlights section of this Report for details.

### **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 school administrator referrals. School administrator referrals 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 January 1, 2021, the SBAO handled:

<b>Board Items</b>	<b>110</b>
<b>Board Member Referrals/Legal Reviews</b>	<b>84</b>
<b>Superintendent Referrals</b>	<b>45</b>
<b>Public Records Requests</b>	<b>16</b>
<b>Duty Call Entries</b>	<b>403</b>
<b>Creditor Rights/Garnishments</b>	<b>242</b>

### **Public Record Requests**

In addition to the 16 Public Records Request that our office individually responded to, The SBAO delivers extensive legal assistance to the Office of Communications and Community Engagement related to compliance with Public Record Requests. The SBAO saw a substantial increase in requests during 2020 as the number of newsworthy stories substantially increased.

## **AWARDS AND RECOGNITIONS**

The School Board Attorney is the first Registered Parliamentarian (“R.P.”) to serve in the SBAO, and one of the few R.P.s to serve as a school board attorney in the entire State of Florida. He, along with Assistant School Board Attorneys Mary Lawson and Sara Marken, are certified by the Florida Bar Board as specialists/experts in Education Law. Mary Lawson also served as the Vice-Chair for Membership of the Florida Bar Education Law Committee. The School Board Attorney, Deputy School Board Attorney Luis M. Garcia, and Assistant School Board Attorneys Mary Lawson, Henry Suarez, Sara Marken, and Jordan Madrigal were all appointed by the President of the Florida Bar to serve as members of the Florida Education Law Committee. The SBAO has one of the longest serving legal advisors in the state, Luis M. Garcia, Deputy School Board Attorney. In addition, the School Board Attorney and several attorneys are recognized as statewide legal experts in their practices, and routinely provide a significant portion of the lectures and materials for the Education Law Certification preparation courses in the areas of Charter Schools, Student Rights, Instructional Materials, Business Operations, Student Discipline and Special Education. Henry Suarez, Assistant School Board Attorney, served on the Florida Bar Worker’s Compensation Rules Advisory Committee. 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 School 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 School Board Attorney also recently received several awards and certificates for his contributions to the local legal community.

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 appointed by Florida Governor Rick Scott and reappointed by Governor Ron DeSantis to the 11<sup>th</sup> Judicial Circuit Nominating Commission (JNC), a prestigious appointment to a committee that screens and recommends judicial candidates to the governor for appointment to the local bench. The School Board Attorney has also served as the Vice Chair and the Chair of the JNC. The School Board Attorney was also elected to the Board of Directors for the Florida School Board Attorneys’ Association.

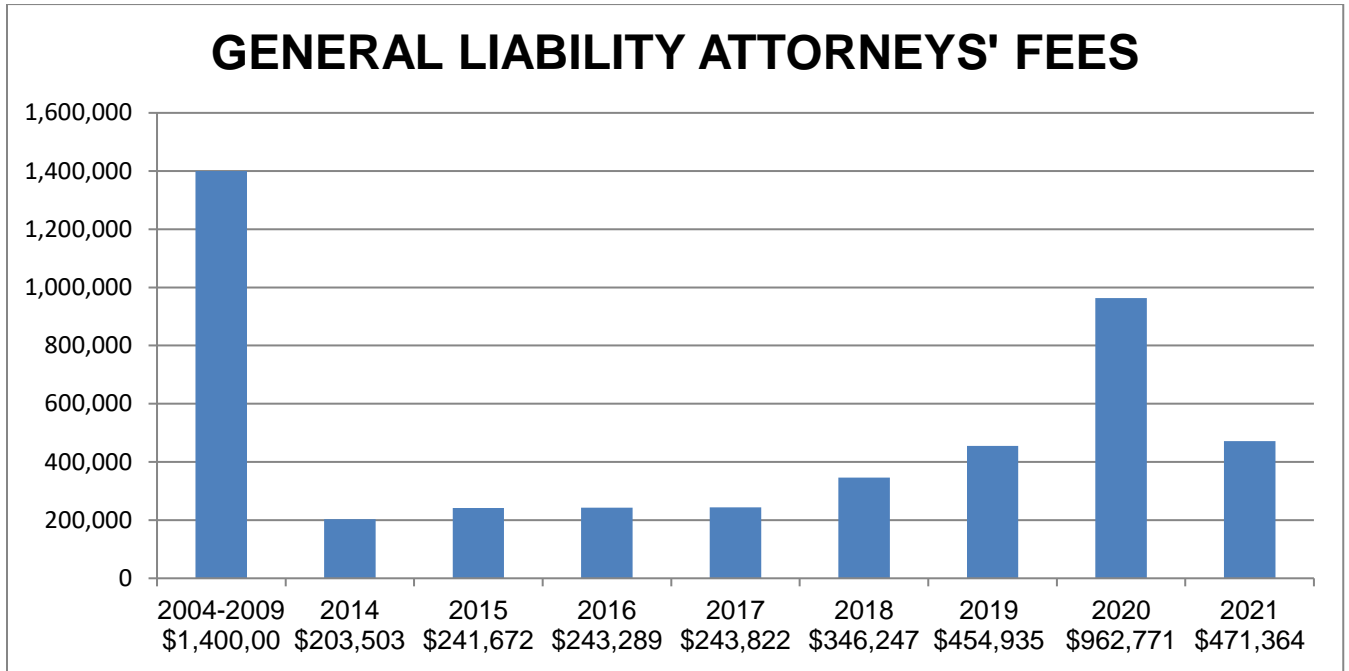
In 2019, a group of Judges of Compensation Claims and Miami-Dade workers’ compensation practitioners founded the Richard A. Sicking American Inn of Court under the auspices of the American Inns of Court, an organization driven by goals of professionalism and mentoring. After careful vetting, the Inn chose MDCPS partner *Take Stock in Children* as its chosen charity. The Inn, through TSIC and our MDCPS Office of Community Engagement

volunteering screening, offers mentorship opportunities, bringing together workers' compensation attorneys, judges, and mediators with at-risk high school students attending Miami-Dade County public high schools. Assistant Board Attorney Jeanette Guerrero Edwards is a founding member of the Inn and is presently serving a two-year term as Secretary, and Executive Board member.

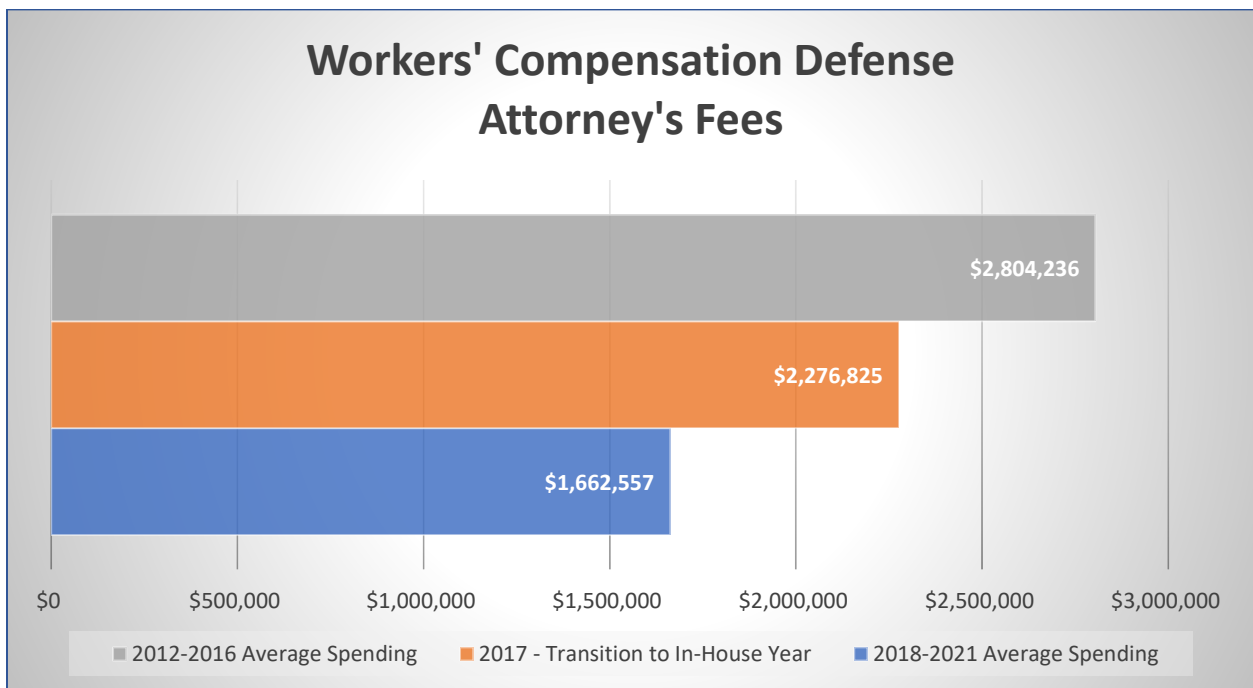
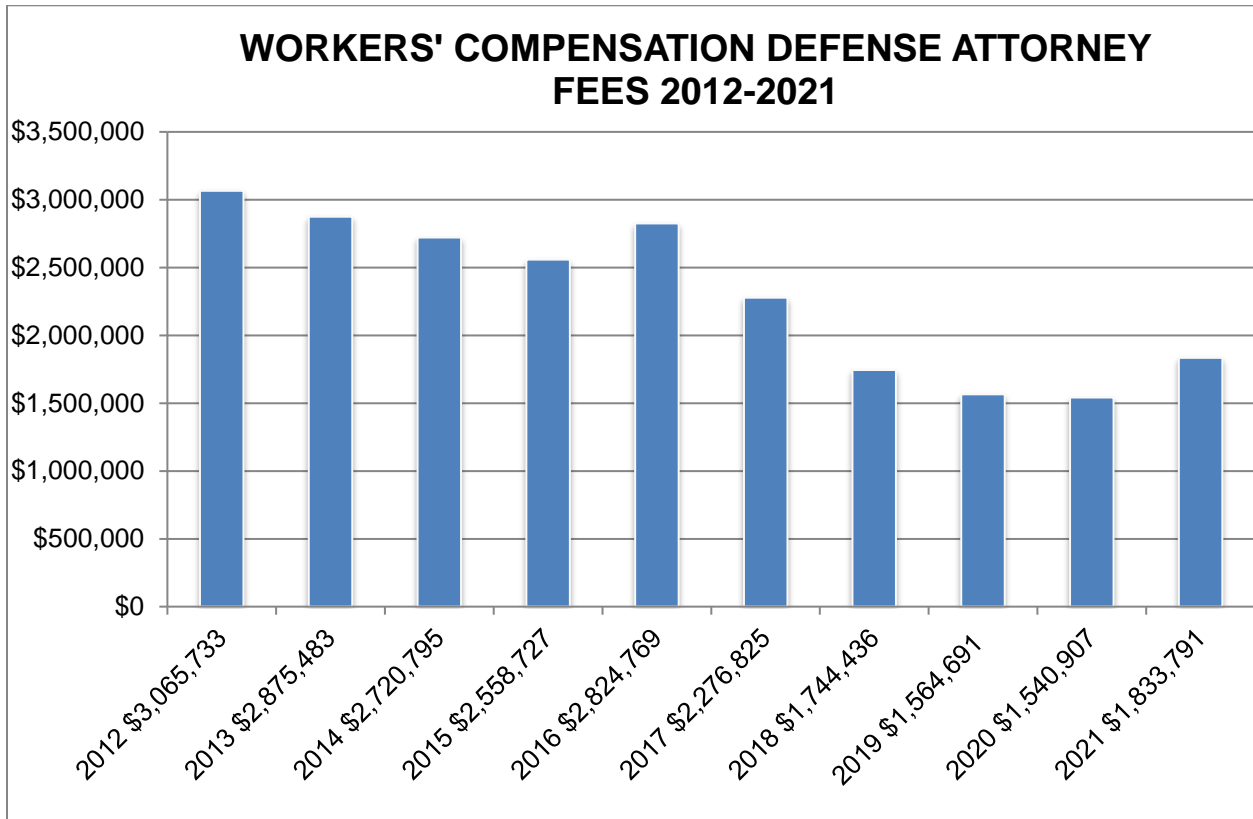
### **OFFICE COMPOSITION, FUTURE GOALS, COMPENSATION**

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 attorneys have been organized into practice areas with designated specialties. See Exhibit E, Organizational Chart.

**EXHIBIT A**



**EXHIBIT B**



**EXHIBIT C**

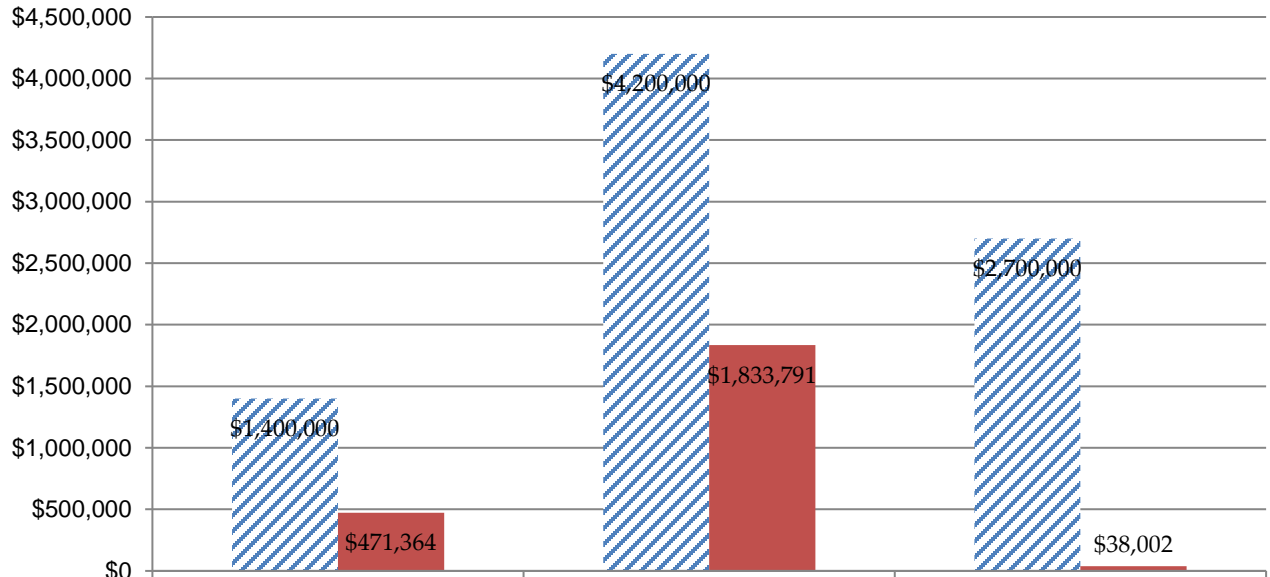
**TOTAL CONSTRUCTION-RELATED ATTORNEYS' FEE EXPENDITURES**

<b>FISCAL YEAR</b>	<b># CASES/ CLAIMS</b>	<b>TOTAL ATTORNEYS' FEE EXPENDITURES \$</b>
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	18,209.00
2017/2018	16	37,835.10
2018/2019	9	34,603.11
2019/2020	12	28,209.37
2020/2021	7	38,002.00

**EXHIBIT D**

**ATTORNEYS' FEE COMPARISONS**

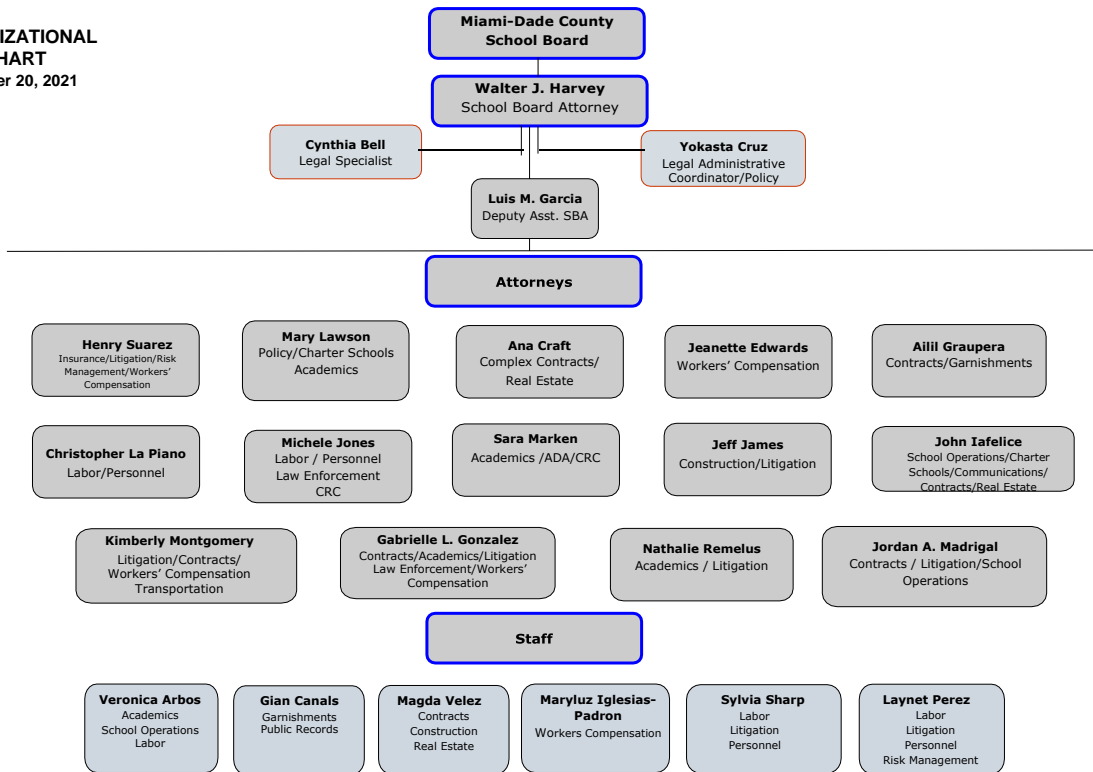
Pre-2010 Average  
2021



	General Liability	Workers' Compensation	Construction
Pre-2010 Average	\$1,400,000	\$4,200,000	\$2,700,000
2021	\$471,364	\$1,833,791	\$38,002

# EXHIBIT E

**ORGANIZATIONAL  
CHART**  
October 20, 2021



**RECOMMENDED:**

That The School Board of Miami-Dade County, Florida:  
1) accept the 2021 Annual Report of the School Board Attorney; and  
2) approve salary adjustment for Assistant Board Attorney Jeanette Guerrero Edwards, within the Board-approved salary range and the allowable parameters of the SBAO budget in light of the significant savings attributable to her work in the area of workers' compensation.