

Office of Superintendent of Schools
Board Meeting of June 21, 2023

June 8, 2023

Office of General Counsel
Walter J. Harvey, General Counsel

SUBJECT: ANNUAL REPORT TO THE BOARD

COMMITTEE: PERSONNEL, STUDENT, SCHOOL, & COMMUNITY SUPPORT

LINK TO STRATEGIC PLAN: EFFECTIVE AND SUSTAINABLE BUSINESS PRACTICES

The School Board General Counsel presents this annual report to the Board summarizing and highlighting the legal work and overall performance of the Office of the General Counsel (OGC). The General Counsel 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 OGC 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 OGC 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.

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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 of new Schools of Hope Performance-Based Agreements.
- Facilitated the conclusion of all litigation over facial-covering requirements in schools.
- Monitored legislation involving parental rights in education, provide ongoing guidance to Division of Student Services in light of legal developments, and defended and monitored outside counsel's defense of related lawsuits.
- Continued oversight of litigation with the City of Aventura and charter school operator over property tax referendum proceeds and eventually resolved the litigation.
- Florida Legislation – Legal Analysis, Rule Development and Compliance Issues, along with formulation and implementation of relevant Board policies as a result of the numerous education related bills enacted into law during the 2022 legislative session.
- School Board Initiatives – Legal Analysis and Rule Development
- Negotiated, reviewed and drafted several complex agreements for commercial, telecommunications and real estate transactions, which included multivariate arrangements designed to protect the Board's tangible assets, intellectual property and legal rights within sophisticated transactions—this includes the agreements governing the transition concerning the management of the day-to-day operations of WLRN to a contracted, professional Media Management Agency.

Presentations

Although attorneys in the OGC are regularly requested to present at conferences and professional organizations, due to the ongoing pandemic our attorney's participation in these presentations was curtailed. In the last year, OGC 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 Florida Bar, Education Law Committee presentations (various)
- The Quarterly Chat for SBE 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
- Guest lecturers concerning school law topics at local law schools, colleges, and high schools regarding various topics in Education Law
- Forums, seminars, ad hoc committees and working groups with various local judges and attorneys regarding public schools and education law
- L2L Professional Development Round Table for MDCPS Principals and Assistant Principals

Internal Staff Trainings

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

- The Employee Disciplinary Process and Other relevant Topics for School Site Administrators
- Board Member & Administrative Assistant Training on Ethics & Board Governance
- The District’s Summer *Synergy* Program for Administrators, 2022
- OGC provided training on the Sunshine law, public records, parliamentary procedure and ethics laws to the Board as well as 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), Bridging the Gap Committee, 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 SBE/MBE and M/WBE Advisory Committee, Technical Advisory Committee, and various task forces.
- OGC provided ongoing training with Student Services staff to District Counselors and others on various student-related issues.
- OGC provided training to staff as part of the Exceptional Student Education Summit in August 2023.

Trademark, Licensing and Copyright Programs

The OGC continues to ensure the legal protection of the District's marks through the Trademark Logo and Protection Contract. In pursuit of this, all of the District's High School marks are active through the Florida Department of State. Several school marks and the M-DCPS logo have been renewed with the U.S. Patent and Trademark Office granting the School Board a Declaration of Continued Use for an additional ten years. OGC is continuously working with District staff in registering new marks with the Florida Department of State and the U.S. Patent and Trademark Office.

WLRN

The past year saw a major transition for WLRN. For the first time since its inception, the School Board transitioned elements of the station to Friends of WLRN as the Media Manager. The new relationship allows the station to be managed by the best and the brightest in the field with a strong contractual commitment between the parties. Currently, OGC continues to actively assist WLRN, Friends of WLRN, and all station staff in a wide-ranging capacity. OGC also continues to review, alter and approve all contracts created for WLRN and assists the Media Manager as needed.

Collaborative Partnerships

The OGC 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 2022 calendar year, the OGC, in consultation with the Superintendent's Office and Cabinet, facilitated the Board's annual review of policy revisions resulting from the 2022 legislative session, as well as Board and staff initiatives. The OGC brought forth or assisted District staff in bringing forth seventy (70) policies for amendment or adoption in 2022. The policy revisions addressed a wide range of areas, including Board governance, public records, school safety, business practices, student programs, assessment and achievement, interscholastic athletics, school operations, student well-being, anti-discrimination, parental rights, employment practices and community relations. During the process, OGC also provided guidance to several District departments on interpreting and applying the legislation and policy amendments to the operation of District schools. The OGC also provided a legal review of the comprehensive policies governing the Student Progression Plan, and the *Code of Student Conduct*.

PILLARS

EFFECTIVE AND SUSTAINABLE BUSINESS PRACTICES

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

General Liability/Tort

OGC attorneys handle the majority of all general liability claims and lawsuits brought against the District. These include pre-suit notices of claims (required by § 768.28, F.S. prior to filing a lawsuit) and general liability lawsuits brought against the District seeking monetary damages for personal injury and property damage. During 2022, 179 pre-suit notices of claims and 48 general liability lawsuits were received and processed by the OGC. The 179 pre-suit notices of claim received during 2022 represent a substantial increase over the 109 pre-suit notices of claim received during 2021. The 48 general liability lawsuits brought against the District during 2022 likewise represent an increase over 2021 when 45 general liability lawsuits were received. Based on 2022 trends, notably the significant increase in pre-suit notices of claims, we anticipate that the number of general liability lawsuits brought against the District will continue to increase during 2023 and beyond.

At present, OGC attorneys are defending in-house 78 general liability lawsuits which were previously filed against the District. This represents approximately 96% of all lawsuits presently pending against the District. In addition to handling lawsuits in-house, the OGC supervises all lawsuits assigned to outside attorneys. During 2022 there were 3 litigated matters involving specialized areas of legal practice assigned to outside counsel.

During 2022, general-liability outside counsel fees decreased substantially for the second year in a row to \$405,832, as compared to \$471,364 in 2021 and \$929,410 in 2020. The 2022 general liability outside counsel fees are in fact the lowest since 2018. See Exhibit A. Of the \$405,832 in general liability outside counsel fees expended during 2022, only \$81,238 is attributable to personal injury litigation, the lowest amount since 2017. This is a direct result of OGC attorneys handling the great majority of personal injury lawsuits. The remaining general liability outside counsel fees expenditures are related to litigation involving specialized areas of legal practice such as defense of legal challenges involving distribution of the 2018 mileage levy referendum funds and defense of efforts by the Florida Attorney General's Office to extinguish and release opioid mitigation claims brought by the District and other Florida political subdivisions against manufacturers and distributors of said pharmaceuticals.

The utilization of OGC 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 OGC 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, as compared to the aforementioned \$405,832 expended during 2022. See Exhibit D, Attorneys' Fee Comparison attached. We anticipate that outside counsel fees expenditures during 2023 and beyond will continue this downwards trend.

Workers' Compensation

Commencing in early 2017, the OGC extensively expanded its in-house workers' compensation law practice. Presently, OGC attorneys are handling in excess of 100 litigated workers' compensation claims that have been filed against the District. During 2022, seventy-one (71) new litigated workers' compensation claims were assigned to OGC attorneys, a significant increase (> 47%) over those retained in-house over the preceding year. The OGC was successful in bringing over 101 claims to closure during 2022 and presently represents the District in over 218 litigated and non-litigated workers' compensation matters. Legal fees paid to outside workers' compensation defense counsel have decreased significantly since the 2017 inclusion of workers' compensation matters in the OGC's in-house practice. Legal expenditures during the five-years preceding 2017 averaged \$2,804,236 per year. In 2022, expenditures for outside counsel dropped to \$1,336,622, less than half of the spending seen in 2016 and a fraction of the expenditures seen in decades past. See **Exhibit B**, Workers' Compensation Attorneys' Fees, attached. These savings are particularly drastic when compared to the average expenditures in 2008 (\$4.3 million) and 2009 (\$4.1 million), for example. The OGC has every expectation that outside legal expenditures will continue to decrease as we increase the number of matters retained in-house in upcoming years.

The OGC's workers' compensation department enjoys a strong and thriving partnership with Risk Management, constantly streamlining workers' compensation procedures together and maximizing the effectiveness of the District's groundbreaking return-to-work program (W.E.R.C.). Handling workers' compensation matters in-house over the past six years has allowed the OGC to build trusting relationships with various other departments, all of whom are vital to the success of the workers' compensation program. These relationships are the framework which have allowed the drastic reduction in legal expenditures. As such, the OGC strives daily to maintain this intricate level of cooperation between the injured employee's location(s), Risk Management, Personnel, Payroll, Compensation, Leave, OPS, CIU and ADA.

Construction, Planning, and Facilities

The OGC 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 OGC 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 OGC has also 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 OGC has provided legal support in that regard.

The OGC 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 OGC 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 General Counsel provided a presentation at the "On-Boarding Session" for new hires and at various committee meetings where members of the community were present. The OGC 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 \$59,177.89 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 OGC 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 OGC providing representation from contract negotiations thorough completion of task, as may be applicable. OGC 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 OGC 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 provides for a proposed effort by the Town to fund enhanced improvements of the Board-owned property.

The OGC also participated in the negotiation and drafting of agreements relating to providing parking to the Adrienne Arsht Center Trust as well as 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.

The Southside K-8 Center expansion was the first partnership of its kind, which included an educational component and a residential component, for workforce housing prioritizing teachers. Noting that several of the proposed partnerships entail the development of Board-owned property, the Board unanimously approved in August of 2022, Board Item H-9 directing the reviewing and updating of Board policies and procedures impacting Board-owned properties for the purpose of *“safeguarding the taxpayers’ assets in a manner that is in full compliance with the law and the adoption and implementation of best practices.”* As such, the OGC actively participates with District staff in working towards achieving the goals and objectives set by the Board as it pertains to several proposed partnerships with the County, municipalities and other proposers.

Our office also provided legal assistance in that certain Master Solar License Agreement with Florida Power & Light (FPL) 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 as well as in the Amendment to JUA with the Village of Key Biscayne providing for a Village donation to the School Board to install solar panels at MAST Academy at Key Biscayne. Our office also assisted in that certain Electric Vehicle Charging Equipment Agreement by and between the School Board and FPL.

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, OGC 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 8 Public School Proportionate Share Mitigation Development Agreements pursuant to the ILA with total monetary proportionate share mitigation payment to the District of approximately 3.5 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, OGC has continued to provide legal guidance in the negotiations relating to the Interlocal Agreement relating to the subgrants from Miami-Dade County, in the sum of \$14,910,713 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 continued lease agreement with the Educational Federal Credit Union and the lease agreements for cell towers located on Board properties. OGC 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 was paid full appraised value plus costs by FPL for said easement rights.

The OGC continued 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 OGC 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 OGC 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 OGC continues to provide legal assistance to the District's Department of Transportation and its staff in a wide-ranging capacity. The OGC remains an active legal advisor and participant in the Accident Review Committee, which examines every accident involving the District and Miami-Dade Schools Police Department 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 OGC 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 OGC pursues recovery in any situation where a District vehicle was damaged as a result of third-party negligence. In addition, the OGC provides general liability and tort defense for this Department.

Office of Risk and Benefits Management Support

The OGC 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 OGC 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 OGC 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 OGC 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 OGC 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 OGC provides legal advice and recommendations on claims handling strategies to reduce costs and prevent otherwise unnecessary litigation expenditures. OGC 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 which could result in a significant financial impact to the District.

Contracts

The OGC has opened 1,688 new contracts from January 1, 2022, to December 31, 2022. This breaks down to approximately five (5) contracts per day or seven (7) contracts per business day, every business day of the last year. Each of these agreements are handled through the OGC intake process, assigned to an attorney, drafted, reviewed and/or revised, and eventually routed by District staff upon approval as to form and legal sufficiency. OGC reviews over 5,500 documents from the inception of the Agreement until full execution.

As always, OGC 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 force majeure situations. The Software Agreement and Data Sharing Agreements are now created and uploaded in the Forms Management Bank and available for all District staff to utilize. The Data Sharing Agreements are now inclusive of all statutory terms. The OGC also works with the Office of Risk and Benefits Management to ensure all Data Sharing Agreements include not only our standard indemnification, hold harmless, and duty to defend provisions, but also proof of Cyber Liability coverage. All revised forms are uploaded to the online Forms Management Bank.

Our office continues to assist District staff in ensuring that updated forms are used to ensure that the School Board's Policies are adhered to and its interests are protected through these agreements. Some of the significant agreements the OGC assisted District staff in negotiating include: (i) Continuous School Nurses for all schools, including EMT's, paramedics, and firefighters; (ii) Cyber Security Enhancements; (iii) Apprenticeship Participation Agreements; (iv) CareATC Clinic Service Enhancements; (v) Mental Health Assistance Plan; (vi) Dual Enrollment and Articulation Agreements with Universities and Colleges now offering classes in The University of Florida; (vii) Bilingual Agreements with Spain, France, and Portugal; (viii) Numerous Programs with CareerSource, (ix) Cooperating Agreement with Miami-Dade County; (x) Master Agreement with The University of Miami offering additional opportunities and hands-on exposure to their field; (xi) Continuous Agreements for Future Bound Miami Consortium; (xii) Continuous Agreement for a Learning Management System; (xiii) T-Mobile 10Million Grant; (xiv)

Numerous Agreements with Verizon and Arizona State University Grants; (xv) Continuous Alyssa's Alert Agreement for schools (xvi) Form Software and Enterprise Agreements and (xvii) Youth Mental Health Awareness Agreements; (xviii) All software integration Agreements throughout the District are now memorialized with both Software Agreements and Data Sharing Agreements to protect the data and minimize the risk of exposure.

The OGC continues to review every contract for prom, homecoming, senior breakfast and graduation for all District high schools. As always, the OGC 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 OGC 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 OGC continues to work closely with MDSPD in all legal matters. In 2022, the Office of the General Counsel assisted with over 150 legal matters for MDSPD and 34 legal reviews. The OGC 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 OGC 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.

HIGHLY EFFECTIVE TEACHERS, LEADERS & STAFF

Personnel Matters & Employment Litigation

During the 2022 calendar year, the OGC 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 10 personnel matters litigated before the Division of Administrative Hearings (DOAH) and handled by the

SBAO. In addition, OGC defended nine (9) 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:

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|-------------------------------------|-----------|
| State and Federal Litigation | 9 |
| DOAH | 10 |

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:

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|--------------------------|------------|
| OPS Legal Reviews | 130 |
| CRC Legal Reviews | 47 |
| ADA Legal Reviews | 42 |

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

Throughout 2022, the OGC 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. Throughout the year, OGC assisted the ADA-DCC with over two hundred requests.

Office of Professional Standards

In order to better meet the District's needs, the OGC 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 OGC 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 OGC worked closely with the Office of Civil Rights Compliance regarding School Board Policies and procedures for Title IX investigations.

A representative from the OGC 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 OGC continues to provide extensive representation and advice in matters involving various student-related policies and procedures. The OGC 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 OGC also handles various complaints and lawsuits alleging Title VI and Title IX discrimination, disciplinary issues, instructional materials, and other types of complaints and legal claims involving students. Since the last report to the Board, the OGC has worked with the District staff in handling the following cases and pre-suit matters related to student-specific legal claims:

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|----------------------------------------------------|-----------|
| Florida Division of Administrative Hearings | 42 |
| Pre-Litigation Matters (approximate) | 35 |

The OGC 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 OGC assisted the Curriculum and Instruction staff in reviewing and updating the Student Progression Plan. Similarly, the OGC 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.

OGC 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 OGC 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 OGC continued to provide advice on magnet and other school choice programs.

On a daily basis, the OGC 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 hundreds of 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 OGC continues to provide legal advice and oversee charter school application and contract reviews, contract negotiations, District charter management agreements, and many other legal matters relating to charter schools. The OGC also serves as Parliamentarian during charter school Application Review Committees, Contract Review Committees and Program Reviews. This past year, the OGC undertook the task of standardizing the contract that is utilized by the District for initial charter school contracts and renewals.

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| Review of Charter Applications | 11 |
| Charter contracts, renewals, amendments, consolidations, and performance-based agreements | 78 |

The OGC assisted staff involved in District charter management by providing legal advice and written opinions. Legal advice was also provided to Charter School Compliance and 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 OGC 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 OGC internship programs were completely virtual and remote in 2020, the programs resumed in-person during fiscal year 2021.

OGC 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 OGC 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 OGC 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 OGC 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 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 and court orders.

Since January 1, 2022, the OGC handled:

| | |
|---------------------------------------------|------------|
| Board Items | 180 |
| Board Member Referrals/Legal Reviews | 111 |
| Superintendent Referrals | 52 |
| Public Records Requests | 13 |
| Duty Call Entries | 470 |
| Creditor Rights/Garnishments | 260 |

Public Record Requests

In addition to the 13 Public Records Request that the OGC has individually responded to, the OGC delivers extensive legal assistance to the Office of Communications and Community Engagement related to compliance with Public Record Requests. The OGC saw a sharp increase in requests during 2021 as the number of newsworthy stories substantially increased, and that trend continued in 2022.

Awards and Recognitions

The General Counsel is the first Registered Parliamentarian (“R.P.”) to serve in the OGC, and currently the only R.P.s to serve as a school board attorney in the entire State of Florida. He, along with OGC 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 General Counsel, Deputy General Counsel Luis M. Garcia, and OGC 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 and Mary Lawson to serve on the Florida Bar Education Law Certification Exam Committee. The OGC has one of the longest serving legal advisors in the state, Luis M. Garcia, Deputy General Counsel. In addition, the General Counsel 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. The OGC attorneys have also been recognized and made several presentations before the Florida School Board Attorneys Association and several other professional bar associations. Henry Suarez, Associate General Counsel, served on the Florida Bar Worker’s Compensation Rules Advisory Committee. In addition, numerous attorneys in the OGC are licensed to practice in multiple state jurisdictions as well as before the Federal Bar. Several professionals in the OGC have received statewide recognitions and awards.

The General Counsel 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 General Counsel also recently received several awards and certificates for his contributions to the local legal community.

The OGC 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 General Counsel 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 11th 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 General Counsel has also served as the Vice Chair and the Chair of the JNC. The General Counsel 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 OGC 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 OGC 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. The General Counsel is very appreciative for the support the OGC receives from the School Board and District Administration.

See **Exhibit E**, *Organizational Chart*.

EXHIBIT A

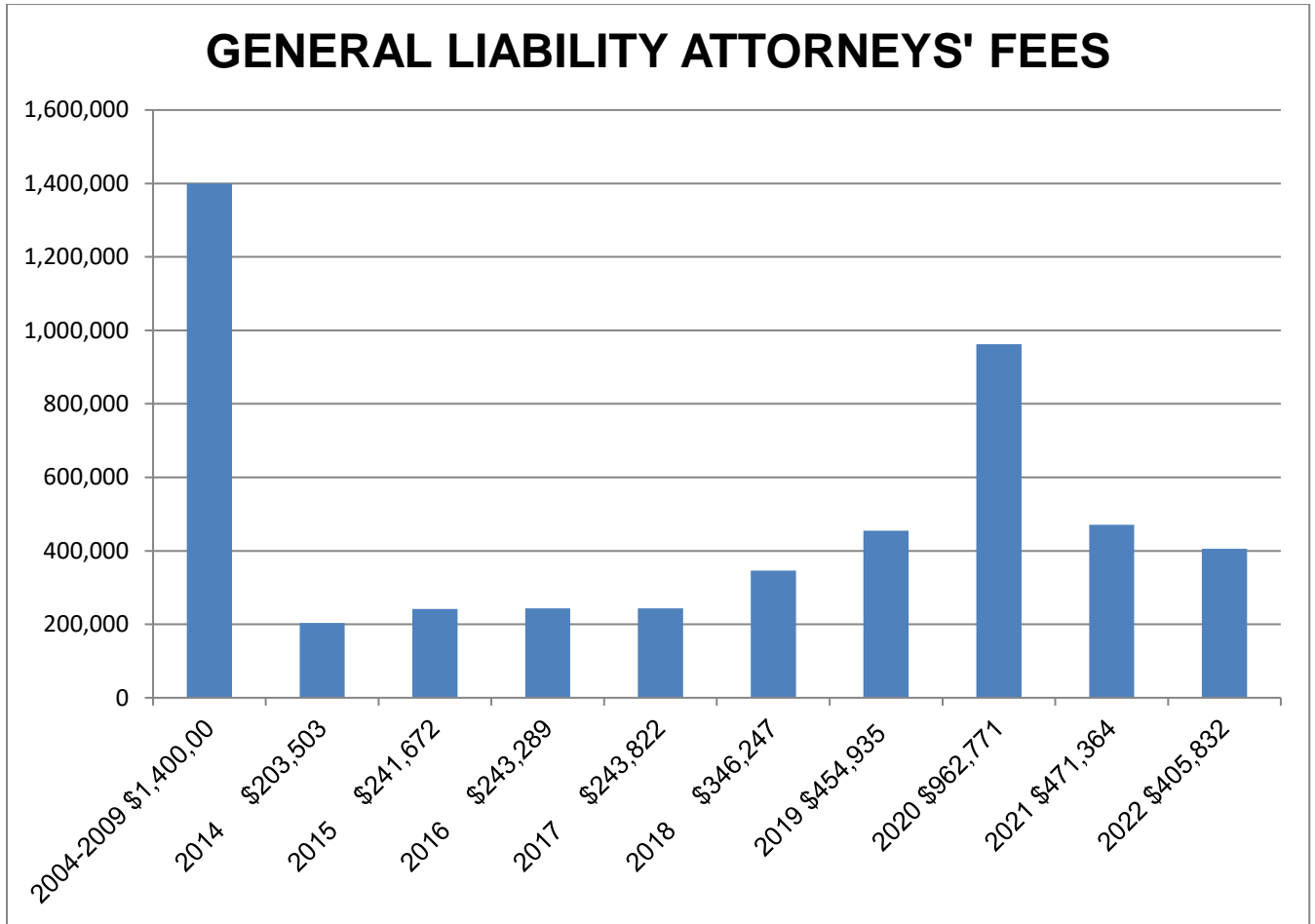
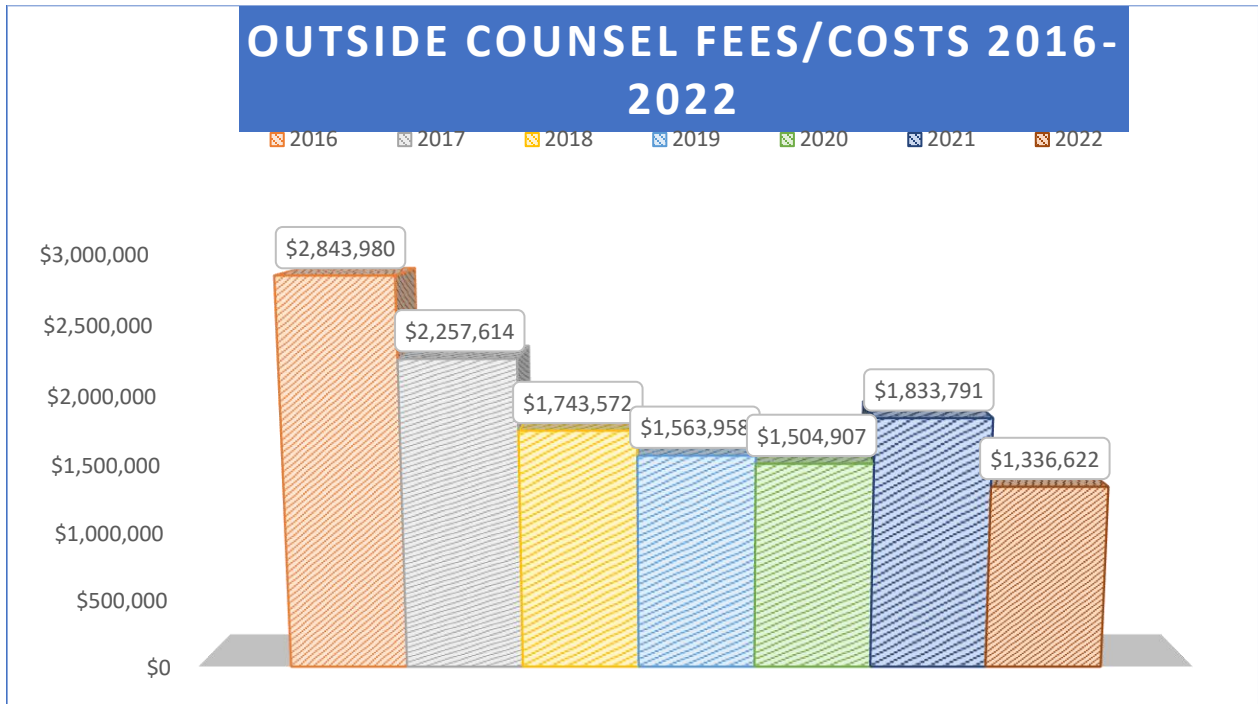


EXHIBIT B



**W. COMP. OUTSIDE LEGAL FEES
2010 TO 2022**

W.COMP. DEFENSE FEES 2016 VS 2020/2021/2022

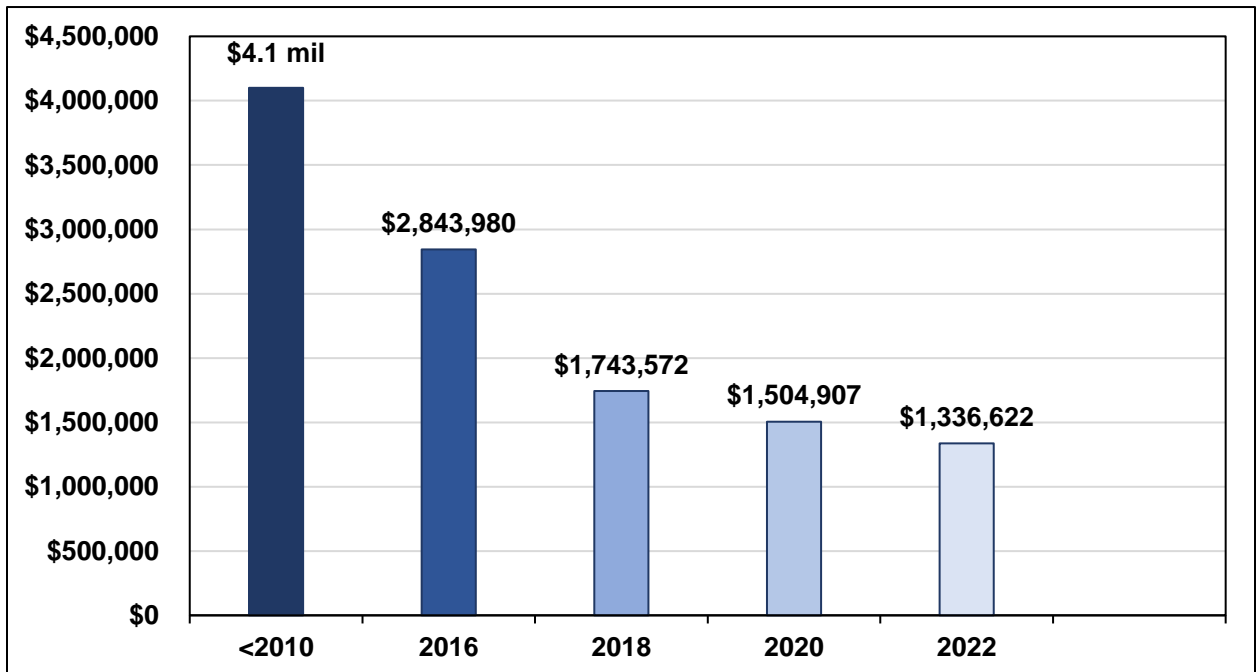


EXHIBIT C

TOTAL CONSTRUCTION-RELATED ATTORNEYS' FEE EXPENDITURES

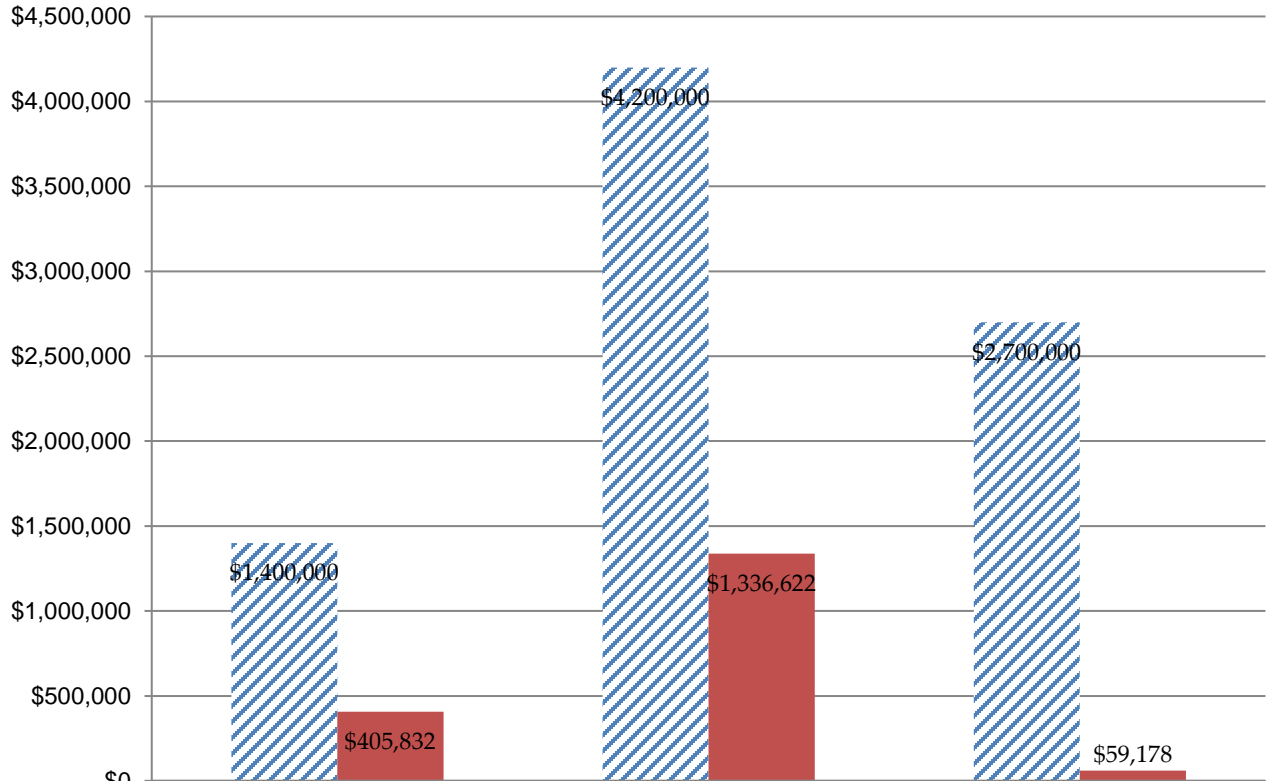
| FISCAL YEAR | # CASES/ CLAIMS | TOTAL ATTORNEYS' FEE EXPENDITURES \$ |
|--------------------|----------------------------|-------------------------------------------------|
| 2004/2005 | 9 | 3,383,189.00 |
| 2005/2006 | 6 | 3,145,609.00 |
| 2006/2007 | 3 | 3,087,140.00 |
| 2007/2008 | 4 | 2,537,426.00 |
| 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 |
| 2021/2022 | 12 | 59,177.89 |

EXHIBIT D

ATTORNEYS' FEE COMPARISONS

Pre-2010 Average

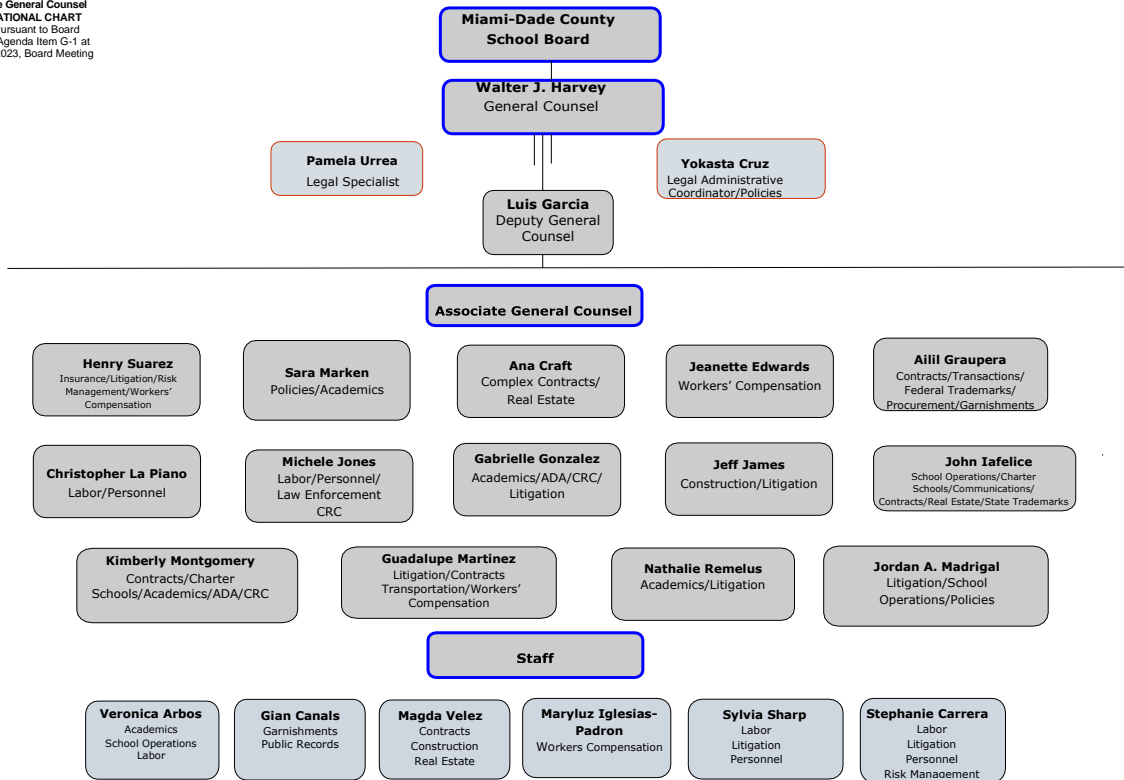
2022



| | General Liability | Workers' Compensation | Construction |
|------------------|-------------------|-----------------------|--------------|
| Pre-2010 Average | \$1,400,000 | \$4,200,000 | \$2,700,000 |
| 2022 | \$405,832 | \$1,336,622 | \$59,178 |

EXHIBIT E

Office of the General Counsel
ORGANIZATIONAL CHART
 Updated Pursuant to Board
 Approval of Agenda Item G-1 at
 the May 17, 2023, Board Meeting



RECOMMENDED:

That The School Board of Miami-Dade County, Florida:
accept the 2022 Annual Report of the School Board
General Counsel.