

Internal Audit Report

Miami-Dade County Public Schools Office of Management and Compliance Audits



AUDIT OF THE MIAMI-DADE COUNTY VALUE ADJUSTMENT BOARD (VAB) APPEALS PROCESS – PHASE 1



Some DOR rules may be exceeding statutory authority. Changes to some Florida Statutes may help to expedite the VAB process. Opportunities exist for improving the overall operations of the VAB.

March 2015

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA

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March 4, 2015

The Honorable Chair and Members of the School Board of Miami-Dade County, Florida

Members of the School Board Audit and Budget Advisory Committee

Mr. Alberto M. Carvalho, Superintendent of Schools

The Honorable Chair and Members of the Board of County Commissioners, Miami-Dade County, Florida

The Honorable Carlos Gimenez, Mayor, Miami-Dade County, Florida

The Honorable Pedro J. Garcia, Property Appraiser, Miami-Dade County, Florida

The Honorable Harvey Ruvin, Clerk of the Circuit and County Courts, Miami-Dade County, Florida

Ladies and Gentlemen:

At the request of the Superintendent, and in accordance with the Office of Management and Compliance Audits' (OMCA) revised audit plan for the 2014-2015 fiscal year, we have completed an audit of the Miami-Dade County Value Adjustment Board appeals process.

Due to the complexity of the overall Value Adjustment Board appeals process, the number of governmental entities involved, and the resources and time needed to perform this important work, the results of this audit are being delivered in two phases.

This report represents Phase 1 and provides recommendations to help eliminate delays impacting the final certification of the County's tax roll. It is noteworthy that these delays have negatively and significantly impacted the School District's ability to fund its operations. The Property Appraiser's Office is at the epicenter of the assessment and appeals process, and its operations will be the subject of Phase 2, the results of which will be reported before the end of the fiscal year.

Our report on Phase 1 of this project identified certain inconsistencies between the Florida Statutes and rules promulgated by the Florida Department of Revenue. In our opinion, concurrently with the School Board Attorney's Office, some of these rules exceed the authority granted by Florida Statutes, and if followed to a large degree,

March 4, 2015

Page 2

could contribute to delaying the Value Adjustment Board appeals process. Accordingly, it is our recommendation that applicable Florida Department of Revenue rules be modified in order to bring them in line with the enabling Florida Statutes.

We also recommend that the Value Adjustment Board develop specific procedures and systems to improve its operations and to comply with the Florida Statutes. We have concluded that there are opportunities to improve the operations and efficiency of the Value Adjustment Board, including updating the Value Adjustment Board's system of records; executing written agreements with Special Magistrates and utilizing them more efficiently; and allowing the School District the right to audit the expenses of the Value Adjustment Board. In addition, the statutorily fixed rate of interest paid on overpaid taxes provides an incentive to appeal property assessment and should be modified.

In conjunction with this audit, the Office of the Inspector General is conducting its own investigation and will separately report its findings and conclusions.

We would like to thank the Value Adjustment Board Manager, the Property Appraiser, M-DCPS Management and their respective staffs for their input and contributions during the audit, and for facilitating a cooperative environment to the audit staff.

Sincerely,

A handwritten signature in blue ink, reading "José F. Montes de Oca".

José F. Montes de Oca, Chief Auditor
Office of Management and Compliance Audits

cc: Mr. Walter J. Harvey
Ms. Mary T. Cagle

Table of Contents



	<i>Description</i>	<i>Page</i>
Δ	Executive Summary	
Δ	Why We Did This Audit.....	1
Δ	What We Found.....	3
Δ	What We Recommend.....	6
Δ	Internal Controls.....	7
Δ	Background.....	8
Δ	Chart - The Petition Process (Detail).....	11
Δ	Organizational Chart.....	12
Δ	Objectives, Scope and Methodology	13
Δ	Findings, Conclusions, and Recommendations	
1	SOME DOR RULES MAY BE EXCEEDING STATUTORY AUTHORITY....	16
2	THE VAB's SYSTEM OF RECORDS (SOR) IS OUTDATED.....	23
3	SPECIAL MAGISTRATE COMPENSATION APPEARS REASONABLE, BUT INCONSISTENCIES SUGGEST INEFFICIENT USE OF RESOURCES	27
4	MAGISTRATES SHOULD BE CONTRACTED FOR THEIR SERVICES.....	31
5	CONTINUE DOCUMENTATION AND VERIFICATION OF SPECIAL MAGISTRATE QUALIFICATIONS.....	32
6	A SMALL NUMBER OF UNLICENSED AGENTS WERE NON- COMPLIANT WITH TAXPAYER AUTHORIZATION REQUIREMENTS...	34
7	THE VAB SHOULD TIMELY COMPLY WITH HEARING NOTICE REQUIREMENTS.....	36
8	SCHOOL DISTRICTS SHOULD HAVE THE RIGHT TO AUDIT VAB EXPENSES.....	37
9	INTEREST ON OVERPAID PROPERTY TAX MAY CONTRIBUTE TO DELAYS IN THE PROPERTY TAX RESOLUTION PROCESS.....	39
Δ	Management's Responses (Complete text).....	41

Executive Summary

Why We Did This Audit

The Value Adjustment Board (VAB) is an entity that hears appeals from property owners who disagree with the Property Appraiser's Office (PAO) assessment. In Miami-Dade County (MDC), the VAB, composed of five members, hires professional individuals to serve as Special Magistrates (SM) to hear and make recommendations to the VAB on appealed property value. Petitions related to value, exemption eligibility and legal issues are heard. In Florida, final certification of county tax rolls cannot be granted by the Property Appraiser until all VAB hearings have been completed.

In recent years, the VAB has experienced delays in the hearing of its appeals process. According to the Miami-Dade County Public Schools (M-DCPS) Administration, delays have resulted in multimillion dollar shortfalls. The delays have a negative fiscal impact to the school district. The Superintendent of Schools requested that the Office of Management and Compliance Audits (OMCA) perform an audit of the VAB appeals process to determine the cause for delays.

The School Board, its Audit and Budget Advisory Committee (ABAC), and the VAB have each independently endorsed and approved this audit in an effort to determine what can be done to prevent, reduce or eliminate the backlog.

During the last five years, property tax assessment appeals to the VAB have been reported as follows:

Miami-Dade County VAB Petitions					
TYPE/YEAR	2009	2010	2011	2012	2013*
Legal	6,354	1,507	1,324	1,231	700
Value	132,058	101,659	81,852	68,946	69,176
TOTAL	138,412	103,166	83,176	70,177	69,876
Number of Days between First and Last Hearing Date by VAB Tax Year					
TOTAL	802	535	492	519	317
<i>*Petitions for the 2013 Tax Year are ongoing as of the issuance of this report.</i>					

The Florida Legislature promulgates laws that govern the Department of Revenue (DOR) and every county's VAB, PAO, Tax Collector (TC) and Clerk of the Courts (COC). Each of these entities plays their respective role in assessing value, processing petitions, and collecting taxes. The DOR develops rules to implement the applicable laws and oversees the VAB process in all counties.

Due to the complexity of the overall VAB process, the number of governmental entities involved, and the resources and time needed to perform our work, the results of this audit are being delivered in two phases. This report represents Phase 1 of the audit, while Phase 2 focuses mostly on the operations of the PAO.

Although it is our intent to separate Phase 1 concerns from those of Phase 2, the integral relationship between entities may necessitate that we make recommendations to all entities in both phases.

Phase 1 provides recommendations to address identified inconsistencies between established DOR rules and Florida Statutes (“Florida Statutes,” “F.S.,” or “Statutes”), some of which may have contributed to delaying the final certification of Miami-Dade County’s tax roll and the operations of the VAB. We also offer recommendations on local issues where we have been able to reach conclusions.

What We Found

The Office of Management and Compliance Audits has concluded that there are opportunities to improve the effectiveness and efficiency of the VAB appeals process in order to better manage the number of petitions being submitted annually. We have also concluded that some DOR rules, specifically those relating to rescheduling of hearings have exceeded statutory authority. In addition, the Property Appraiser, who is at the epicenter of the assessment process, has a significant impact on the timely completion of the VAB petition process.

This report also contains recommendations to improve compliance with rules and Statutes and identified internal control weaknesses in the VAB. The operations of the PAO will be the subject of Phase 2 of our audit.

Rules and Statutory Inconsistencies

The DOR is charged with the responsibility of developing rules to implement the applicable laws, as they relate to the VAB and the PAO. As required, the DOR has created a **Uniform Policies and Procedures Manual for Value Adjustment Boards** (October 2013) to be used by VABs and PAOs in managing their activities and to ensure that taxpayer rights are protected. DOR rules are a subset of Chapter 12D-9 of the Florida Administrative Code.

F.S. 194.011 - Assessment notice; objections to assessments

(5)(b) The department shall develop a uniform policies and procedures manual that shall be used by value adjustment boards, Special Magistrates, and taxpayers in proceedings before value adjustment boards. The manual shall be made available, at a minimum, on the department's website and on the existing websites of the clerks of circuit courts.

The DOR manual states, in pertinent part:

“Rules and Forms: Value adjustment boards, board clerks, taxpayers, property appraisers, and tax collectors are required to follow these rules, as stated in sections 195.027(1) and 194.011(5)(b), Florida Statutes.”

In-depth reviews, by the OMCA and the School Board Attorney's (SBA) Office, of the DOR's manual and enabling Statutes have concluded that some of the DOR's rules allow for both the taxpayer and the PAO's office to reschedule VAB hearings, contrary to the strict construction of the law.

In essence, some of the DOR's rules, including its rules on rescheduling, may be exceeding the authority granted by F.S.

For example, DOR Rule 12D-9.019(4)(c) allows the PAO or Tax Collector to reschedule a hearing even though the rulemaking authority afforded by F.S. 194.032 does not provide for rescheduling by the PAO or TC. In some cases, the PAO has cited lack of staff as the reason for rescheduling a hearing. Nevertheless, pursuant to Florida Statutes 192.0105, the petitioner has statutory right to have his or her petition heard on the date and time specified on the hearing notice. Moreover, the PAO has a statutory duty to properly staff his office to ensure that a petitioner's hearing date and time take place as scheduled.

In addition, some DOR rules allow opportunities for the taxpayer, or the taxpayer's agent to reschedule hearings beyond what is set forth in Statute. Contrary to F.S., some rules may create a condition whereby a hearing can be potentially rescheduled by a petitioner or a petitioner's agent, an unlimited number of times.

Together, the various instances set forth in the DOR's rules collectively provide for the PAO and the taxpayer to reschedule hearings multiple times. As required by F.S. 194.032(2)(a) and DOR Rule 12D-9.007(5), whenever a hearing is rescheduled, all subsequent hearings must be scheduled a minimum of 25 days later.

It is important to note that although the PAO's and/or petitioners may contribute to delays in the VAB appeals process due to rescheduling, such delays are allowed pursuant to DOR rules.

Compliance with Florida Statutes and DOR Rules:

Pursuant to DOR Rule 12D-9.018, a taxpayer has the right to be represented by an attorney or agent. The agent need not be a licensed individual or person with specific qualifications and may be any person, including a family member, authorized by the taxpayer to represent him or her before the VAB. However, a petition filed by an unlicensed agent must be signed or accompanied by written authorization from the taxpayer. We found that petitions filed by a small number of unlicensed agents (five) did not have written authorization by the taxpayer.

In accordance with F.S. 194.032(2)(a) and DOR rule 12D-9.007, the VAB must notify the petitioner and the PAO no less than 25 days prior to the hearing date. Although not a significant number of instances, our test for compliance with the cited law and rule disclosed that for two of the 57 hearings randomly selected for testing from the 2011-2013 Tax Years, the petitioner was not notified of the hearing 25 days in advance as required.

Internal Control Weaknesses

The rate of compensation paid to Special Magistrates (SM), hired by the VAB, to hear and rule on taxpayer's appeals appear reasonable when compared to the other 14 county VABs that responded to our survey. However, while not being punitive to those SMs who efficiently administer their cases, our tests show that the potential to utilize SMs more efficiently exists.

For example, SMs may complete assigned cases in less than four hours, but might be paid the full day's rate of pay without having to work additional cases. Moreover, SM services are not procured under any written contract or agreement, which establishes formal guidelines or terms of SMs' professional relationship with the VAB.

The VAB's system of record used to manage its operations, including the scheduling of taxpayer petitions, is outdated and limiting. For example, we found the following limitations and deficiencies: (1) Data extraction is time consuming; (2) Some event logging information is not available; (3) Some VAB data may not be accurately representing petition statistics; (4) A limited number of status codes are being used incorrectly; (5) The system permits entry of duplicate folios; and (6) Workarounds are used in order to alter petition status, generating incorrect statistics. Examination of the data revealed duplicate folios, some of which were filed by different agents, were present in all years tested, which modestly add to the total count of petitions for the tax years.

Pursuant to F.S. 194.014, a taxpayer who files a petition before the VAB is paid interest on the overpaid amount at the rate of 12% APR. This provision presents an obvious incentive for petitioners to file an appeal before the VAB. Our analysis showed that the average interest rate earned on money market deposit accounts in the Miami area over the last five years was 0.52% per year (11.48% lower than the 12% in Statute). Moreover, the CPI for the last five years were 1.5%, 1.7%, 3%, 1.5% and 2.7% for years 2014, 2013, 2012, 2011 and 2010, respectively (an average of 9.9% lower than the 12% cited above).

What We Recommend

As a result of the multiple rescheduling opportunities created by the application of certain DOR rules, both the taxpayer and the PAO have the ability to request that petitions be rescheduled multiple times, contributing to the delay of MDC's final tax roll certification. Delays in certifying the final tax roll have negatively impacted the School District's ability to fund its current operations.

Our analyses and concurrence by the School Board Attorney's (SBA) office concede that some of the DOR's rules related to the VAB appeals process have exceeded the authority granted by F.S. Accordingly, DOR rules require modification and/or *challenge*. In some cases, *mandamus* relief (a directive for compliance) may be the required remedy in order to compel adherence to the intent and spirit of law, pursuant to and as directed by the Florida Legislature. As such, the School District, through its legislative processes, should pursue corrective remedies to ensure agreement of DOR rules with F.S., as well as revisions to the appropriate Statutes to remove potential delays.

The VAB should develop strategies to utilize their staffing levels, including SMs, more efficiently and effectively in order to expedite the VAB hearing process. The VAB should analyze its case load scheduling to ensure that efficient scheduling of cases is being achieved. Shortening the time between the petition filing deadline and the commencement of hearings, as well as scheduling the established number of "boards" would improve efficiency and reduce delays.

The VAB is in need of accurate information to manage its operations and provide information to stakeholders. As such, it should consider replacing its current legacy system. This important resource is necessary in order to accurately and efficiently process taxpayer petitions.

SMs have an integral role in the VAB appeals process. Their professional relationship with the VAB should be guided by a written contract containing provisions, including, but not be limited to, hearing schedules and terms of services, specific standards of performance, compensation rates, annual magistrate performance assessments, code of conduct and conflict of interest.

The School District should consider developing a mechanism, whether through contracted agreements or legislation, to allow it to audit the expenses related to the VAB process.

Although it is our intent to separate Phase 1 concerns from those of Phase 2, the integral relationship between entities may necessitate that we make recommendations to all entities in both phases.

We are making 11 recommendations applicable to the various governmental bodies involved in the appeals process.

Internal Controls

The chart below summarizes our overall assessment of VAB internal controls:

INTERNAL CONTROLS RATING			
CRITERIA	SATISFACTORY	NEEDS IMPROVEMENT	INADEQUATE
Process Controls		X	
Policy & Procedures Compliance		X	
Effect			X
Information Risk			X
External Risk		X	

INTERNAL CONTROLS LEGEND			
CRITERIA	SATISFACTORY	NEEDS IMPROVEMENT	INADEQUATE
Process Controls	Effective	Opportunities exist for improvement	Non-existent or unreliable
Policy & Procedures Compliance	In compliance	Non-compliance issues exist	Non-compliance issues are pervasive, significant, or have severe consequences
Effect	Not likely to impact operations or program outcomes	Impact on outcomes contained	Negative impact on outcomes
Information Risk	Information systems are reliable	Data systems are mostly secure but can be improved	Systems produce incomplete or inaccurate data which may cause inappropriate decisions.
External Risk	None or low	Potential for damage	Severe risk of damage

Background

The Value Adjustment Board:

Each Florida County is required by F.S. 194.015 to maintain a VAB through which taxpayers may contest the value of real estate and personal property as assessed by the PAO by filing a petition with the VAB. The VAB's primary function is to hear evidence as to whether or not properties are assessed at their proper value and/or whether tax exemptions or agricultural classifications should be approved. Petitions can be filed online, by mail, or in person.

In Miami-Dade County, VAB membership consists of:

- Two Miami-Dade County Commissioners
- One Miami-Dade County School Board Member
- One citizen of Miami-Dade County, appointed by the County Commission
- One citizen of Miami-Dade County, appointed by the School Board

Hearings are conducted by SMs, hired by the VAB, to determine whether or not petitioned properties are properly assessed and provide recommendations to the VAB regarding the property's just value. SMs are deemed experts in the property valuation arena and are qualified real estate appraisers, personal property appraisers, or attorneys.

It is important to note that the VAB does not have the authority to change millage rates, which are set by each individual taxing authority. However, the VAB has the authority to increase or decrease market value of property, which in turn affects a property owner's total tax assessment due. The county's COC serves as the VAB's clerk:

DOR Rule 12D-9.006 Clerk of the Value Adjustment Board.

(1) The clerk of the governing body of the county shall be the clerk of the value adjustment board. (2) The board clerk may delegate the day to day responsibilities for the board to a member of his or her staff, but is ultimately responsible for the operation of the board.

Information published on the VAB's website by the MDC COC states the following:

“Both the VAB and the Special Magistrates are independent of the Property Appraiser's Office. In fact, the Property Appraiser is merely another party before the VAB or the Special Magistrate, just as is the petitioner (taxpayer). If the VAB decides that it does not agree with the Property Appraiser's Office regarding the assessed value of a petitioner's property, the VAB has the authority to reduce the property's assessed value to its actual fair market value. If the VAB reduces an assessment within the limits described below, then the Property Appraiser (PA) must accept the reduction and may not appeal the VAB decision by filing a suit in the Circuit Court. If, however, the VAB decision results in a reduction exceeding the limits described below, the Property Appraiser may appeal the VAB decision by filing suit in Circuit Court.” (Source: http://www.miami-dadeclerk.com/faq_VAB.asp)

ASSESSED VALUE	MAXIMUM ADJUSTMENT PERMITTED
\$50,000 or less	15%
In excess of \$50,000, but not more than \$500,000	10%
In excess of \$500,000, but not more than \$1,000,000	7.5%
In excess of \$1,000,000	5%
Source: http://www.miami-dadeclerk.com/faq_VAB.asp#1	

The Property Appraiser:

In MDC, the elected Property Appraiser has responsibility for assessing the market value of real and tangible personal properties. A taxpayer who disagrees with his or her assessment can not only meet informally with the PAO, but can also submit a petition to appeal the Property Appraiser's assessment to the VAB at any time.

VAB Hearings and the Petition Process:

A VAB hearing requires that the petitioner and a PAO representative meet at a predetermined date and time for presentation of evidence to a SM. Based on the evidence presented, the SM will make a determination of value, which is subsequently mailed to the petitioner. If the taxpayer does not agree with the SM's decision, the taxpayer can file suit in accordance with F.S. 194.171. When the VAB has heard all petitions for a tax year, it can certify its activity and the impact to the county tax roll.

The Department of Revenue:

The DOR administers Florida's **Property Tax Oversight Program**. Some of its primary functions are:

- Review each county's tax rolls annually
- Review the millage rates and public hearing notifications issued by local taxing authorities
- Certify county levels of assessment for use in equalizing public school funding
- Review and approve property appraisers' and tax collectors' budgets annually
- Review and analyze non-ad valorem assessments in each county
- Promulgate administrative rules and forms necessary to ensure the uniform and equitable administration of property taxes statewide
- Provide professional certification and training for property appraisers, tax collectors, value adjustment boards and local taxing authorities
- Assess all railroads and private car lines annually
- Procure aerial photographs and parcel maps for each county
- Review and approve property tax refunds in excess of \$2,500 and any corrections or cancellations to tax certificates
- Respond to inquiries and requests for assistance from taxpayers, local governments and other state agencies
- Provide the legislature with statewide property tax data and reports

(Source: <http://dor.myflorida.com/dor/property/aboutus.html>)

The flow chart on the next page, which was vetted extensively by the process owners, is an accurate representation of the various options available to a taxpayer and the steps required to contest the PAO valuation. This chart is followed by an organizational chart depicting the administrative oversight of the VAB appeals process.

The Petition Process (Detail)

```

graph TD
    START([START]) --> PA_MDC[PA arrives at a market value for all property in MDC as of January 1st of each year]
    PA_MDC --> TP_NOTICE[TP receives notice of proposed market value TRIM notice]
    TP_NOTICE --> TP_AGREES[TP AGREES with proposed market value]
    TP_AGREES --> TP_PAYS[TP pays tax bill]
    TP_PAYS --> END([END])
    
    TP_NOTICE --> TP_DOES_NOT[TP DOES NOT AGREE with proposed market value]
    TP_DOES_NOT --> VAB_HEARING[VAB hearing date set and exchange of evidence takes place between TP & PA]
    VAB_HEARING --> DAY_OF_HEARING[Day of Hearing: TP & PA meet to present evidence to VAB Magistrate and discuss property market value]
    DAY_OF_HEARING --> TP_CAN_SETTLE[TP and PA can still reach a settlement at hearing]
    TP_CAN_SETTLE --> TP_PAYS
    
    TP_CAN_SETTLE --> TP_DOES_NOT_SETTLE[TP and PA reach agreement on market value]
    TP_DOES_NOT_SETTLE --> VAB_CERTIFIES[VAB certifies Tax Roll once all hearings are completed]
    VAB_CERTIFIES --> VAB_RECORDS[VAB mails Record of Decision within 20 days]
    VAB_RECORDS --> END
    
    TP_DOES_NOT --> TP_MAY_ELECT[TP may elect to attempt settlement with PA AND/OR petition the VAB simultaneously]
    TP_MAY_ELECT --> TP_PA_NEGOTIATE[TP and PA negotiate, based on evidence, to arrive at a mutually accepted market value]
    TP_PA_NEGOTIATE --> TP_PAYS
    
    TP_MAY_ELECT --> TP_PA_DO_NOT[TP and PA DO NOT reach agreement on market value]
    TP_PA_DO_NOT --> TP_PETITION[TP must petition the VAB within 25 days of TRIM notice]
    TP_PETITION --> TP_PAYS_75[TP MUST pay 75% of proposed taxes before taxes become delinquent]
    TP_PAYS_75 --> VAB_HEARING
    
    TP_PAYS_75 --> TP_DOES_NOT_AGREE[TP DOES NOT agree with Magistrate's value]
    TP_DOES_NOT_AGREE --> MAG_REVIEW[Magistrate reviews evidence and issues a Fact Finding Sheet]
    MAG_REVIEW --> TP_AGREES_MAG[TP agrees with Magistrate's value]
    TP_AGREES_MAG --> VAB_CERTIFIES
    
    TP_DOES_NOT_AGREE --> TP_REQUESTS_RECONSID[TP may request a Reconsideration of the Magistrate's Decision]
    TP_REQUESTS_RECONSID --> TP_MAY_FILE_SUIT[TP may file suit against the PA]
    TP_MAY_FILE_SUIT --> END
  
```

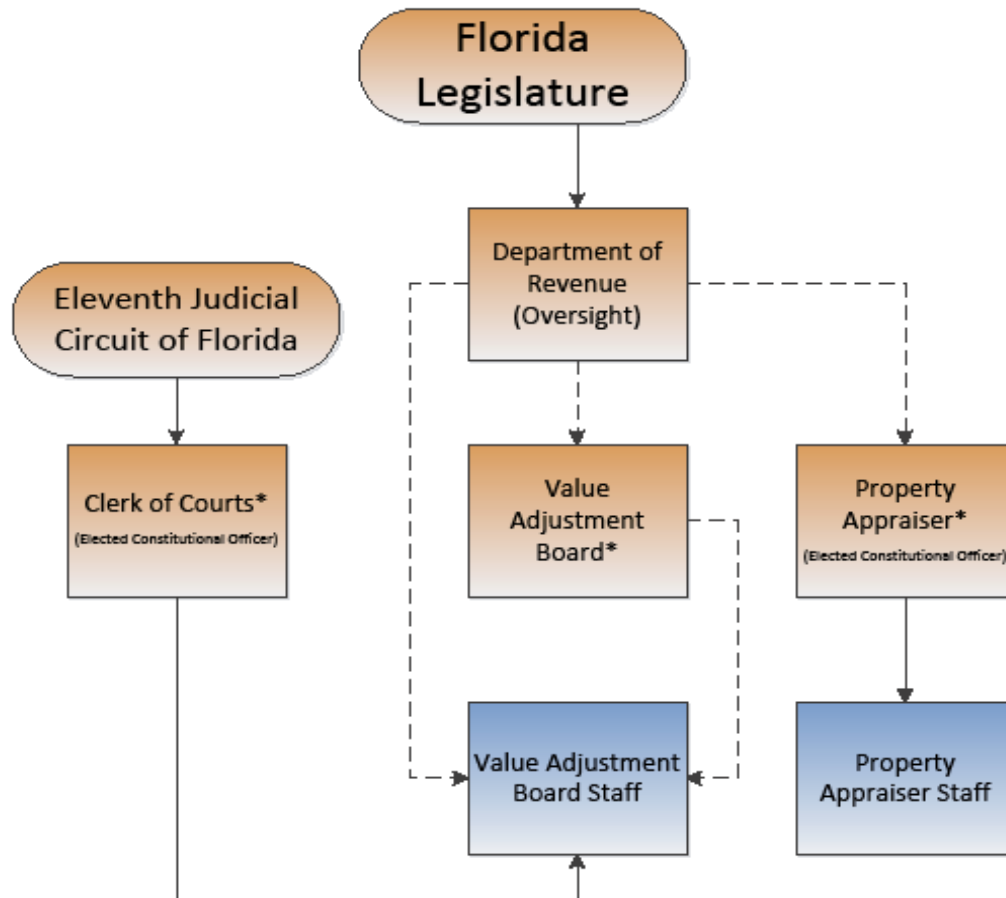
Legend:

- VAB = Value Adjustment Board
- PA = Property Appraiser
- TP = Taxpayer (Owner or Owner's Agent)

Flowchart Details:

- START** leads to **PA arrives at a market value for all property in MDC as of January 1st of each year**.
- PA arrives at a market value for all property in MDC as of January 1st of each year** leads to **TP receives notice of proposed market value (TRIM notice)**.
- TP receives notice of proposed market value (TRIM notice)** leads to **TP AGREES with proposed market value**.
- TP AGREES with proposed market value** leads to **TP pays tax bill**.
- TP pays tax bill** leads to **END**.
- TP receives notice of proposed market value (TRIM notice)** also leads to **TP DOES NOT AGREE with proposed market value**.
- TP DOES NOT AGREE with proposed market value** leads to **VAB hearing date set and exchange of evidence takes place between TP & PA**.
- VAB hearing date set and exchange of evidence takes place between TP & PA** leads to **Day of Hearing: TP & PA meet to present evidence to VAB Magistrate and discuss property market value**.
- Day of Hearing: TP & PA meet to present evidence to VAB Magistrate and discuss property market value** leads to **TP and PA can still reach a settlement at hearing**.
- TP and PA can still reach a settlement at hearing** leads to **TP and PA reach agreement on market value**.
- TP and PA reach agreement on market value** leads to **VAB certifies Tax Roll once all hearings are completed**.
- VAB certifies Tax Roll once all hearings are completed** leads to **VAB mails Record of Decision within 20 days**.
- VAB mails Record of Decision within 20 days** leads to **END**.
- TP DOES NOT AGREE with proposed market value** also leads to **TP may elect to attempt settlement with PA AND/OR petition the VAB simultaneously**.
- TP may elect to attempt settlement with PA AND/OR petition the VAB simultaneously** leads to **TP and PA negotiate, based on evidence, to arrive at a mutually accepted market value**.
- TP and PA negotiate, based on evidence, to arrive at a mutually accepted market value** leads to **TP pays tax bill**.
- TP may elect to attempt settlement with PA AND/OR petition the VAB simultaneously** also leads to **TP and PA DO NOT reach agreement on market value**.
- TP and PA DO NOT reach agreement on market value** leads to **TP must petition the VAB within 25 days of TRIM notice**.
- TP must petition the VAB within 25 days of TRIM notice** leads to **TP MUST pay 75% of proposed taxes before taxes become delinquent**.
- TP MUST pay 75% of proposed taxes before taxes become delinquent** leads to **VAB hearing date set and exchange of evidence takes place between TP & PA**.
- TP MUST pay 75% of proposed taxes before taxes become delinquent** also leads to **TP DOES NOT agree with Magistrate's value**.
- TP DOES NOT agree with Magistrate's value** leads to **Magistrate reviews evidence and issues a Fact Finding Sheet**.
- Magistrate reviews evidence and issues a Fact Finding Sheet** leads to **TP agrees with Magistrate's value**.
- TP agrees with Magistrate's value** leads to **VAB certifies Tax Roll once all hearings are completed**.
- TP DOES NOT agree with Magistrate's value** also leads to **TP may request a Reconsideration of the Magistrate's Decision**.
- TP may request a Reconsideration of the Magistrate's Decision** leads to **TP may file suit against the PA**.
- TP may file suit against the PA** leads to **END**.

Organizational Chart



§195.027 – Rules and Regulations

(1) The Department of Revenue shall prescribe reasonable rules and regulations for the assessing and collecting of taxes, and such rules and regulations shall be followed by the property appraisers, tax collectors, clerks of the circuit court, and value adjustment boards. It is hereby declared to be the legislative intent that the department shall formulate such rules and regulations that property will be assessed, taxes will be collected, and the administration will be uniform, just, and otherwise in compliance with the requirements of the general law and the constitution.

Reporting Structure

Organizational Structure

* The Property Appraiser, Clerk of Courts, County Commissioners and School Board members of the VAB are all Constitutional Officers.

Objectives, Scope, and Methodology

In accordance with the revised audit plan for FY 2014-2015, we performed an audit of MDC's VAB appeals process. The audit covered property tax appeal petitions related to the 2011 – 2013 Tax Years. We also obtained and reviewed data from earlier years that were necessary to accurately identify certain trends. Additionally, because the number and value of tangible personal property petitions are comparatively small, we limited the scope of our work to real estate value petitions.

The objectives of the audit were as follows:

- 1. Identify the causes for delay in the property tax assessment appeal process.**
- 2. Identify trends and indications of apparent impropriety, including possible fraud.**
- 3. Determine whether the operations in the VAB and PA offices related to the property tax assessment appeal process comply with governing Statutes, rules, and comport with sound internal controls.**

Through M-DCPS' Inter-Local Agreement with the MDC Office of the Inspector General (OIG), the OIG was asked to join the audit to contribute resources and expertise to assist in the audit. The OIG is staffed by experienced professionals in their respective audit and investigative areas.

The OMCA and the OIG jointly reviewed the VAB process. Our offices also conducted joint interviews on some VAB and PAO staff, SMs and agents. The OMCA reviewed background checks conducted by the OIG. The OIG will be issuing a separate report with its conclusions on this case at a later date.

The VAB process is complex and includes activity and resources from several entities including the Offices of the COC, the TC, the PAO and the DOR.

We reviewed existing policies, procedures and prior audit reports relating to Florida VABs published by other agencies, including:

- **DOR's Uniform Policies and Procedures Manual for Value Adjustment Boards** (Oct 2013)
- MDC Office of Audit and Management Services (Various)
- Office of Program Policy Analysis & Government Accountability (OPPAGA, Report No. 10-64)
- State of Florida Auditor General (Report No. 2014-194)

We performed the following auditing procedures to satisfy our audit objectives:

- Performed tests specific to the various areas being reviewed, including:
 - Comparisons between DOR rules and authorizing Statutes
 - VAB compliance with DOR rules, required timelines, and notifications
 - Internal policies and procedures for the VAB
 - Magistrate qualifications, training, case load, compensation, and employment standards
 - Rescheduling eligibility and criteria
 - Agent licensure and eligibility requirements for representing a taxpayer
 - VAB scheduling, the hearing process, and resources
 - The role and responsibilities of the PAO, COC, TC, Board of County Commissioners, and M-DCPS as it relates to the VAB
 - The PAO property assessment process
 - Petitioner requirements and timelines
 - PAO settlements
 - Internal controls for the VAB and the PAO
 - VAB and PAO staffing levels
 - Interviews of the VAB and PAO staff, as well as some agents (performed by the OIG)
 - Observed live hearings and reviewed previously recorded hearings
 - Additional audit procedures as deemed necessary
- Analyzed data files containing VAB petition information from tax years 2009 through some of 2013. Due to the volume and complexity of the data, the OMCA requested assistance from M-DCPS' Office of Assessment, Research and Data Analysis, which was instrumental to our work.
- Surveyed 20 of Florida's 67 counties to help us understand how others counties are managing certain aspects of the VAB process. We received 14 responses.

This performance audit was conducted in accordance with generally accepted *Government Auditing Standards*, issued by the Comptroller General of the United States of America. Those standards require that we plan and perform the audit to obtain sufficient and appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit.

A performance audit is an objective analysis, based on sufficient and appropriate evidence, to assist management and those charged with governance and oversight to improve program performance and operations, reduce costs, facilitate decision-making and contribute to public accountability. Performance audits encompass a wide variety of objectives, including assessments of program effectiveness, economy and efficiency; internal control; compliance; and prospective analyses.¹ Planning is a continuous process throughout the audit. Therefore, auditors may need to adjust objectives, scope, and methodology as work is being conducted.² We believe that the evidence obtained provides a reasonable basis for our findings and conclusions.

¹ Comptroller General of the United States, Government Auditing Standards, 2011 Revision, (Washington D.C.; United States Government Accountability Office, 2011), pp. 17-18.

² Ibid., p. 126.

Findings, Conclusions, and Recommendations

1.0 SOME DOR RULES MAY BE EXCEEDING STATUTORY AUTHORITY

We reviewed the DOR's **Uniform Policies and Procedures Manual for Value Adjustment Boards** and compared it with enabling Florida Statutes. Concurrently, the SBA's office performed a similar review. Both the School Board Attorney's office and the OMCA identified and concluded that some DOR rules found in the manual may be exceeding the provisions of the enabling Statute. State agency rules may not exceed or become more expansive than the enabling Statute:

F.S. 120.536 - Rulemaking authority; repeal; challenge

(1) A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling Statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling Statute.

According to the Assistant School Board Attorney:

"Those rules which exceed the statutory authority are subject to rule challenge before an administrative law judge.

The most significant discrepancy between the DOR rules and the enabling statutory authority pertain to the issue of rescheduling of hearings before the VAB. Note that Section 194.032 (2)(a), F.S., unambiguously states that, "...the petitioner may reschedule the hearing *a single time* by submitting to the clerk a written request to reschedule..."

In contrast, although DOR Rule 12D-9.019(4)(a) allows a petitioner to reschedule one time without good cause, 12D-9.019(4)(b) allows additional rescheduling for good cause. “Good cause” is defined in the Rule to include, among other things, “Other reasons beyond the control of the petitioner.” In practice, this would permit rescheduling by the petitioner at will as almost any excuse would suffice.

Another significant discrepancy is that DOR Rule 12D-9.019(4) permits the Property Appraiser and Tax Collector to request a rescheduling of the VAB hearing. However, Florida Statutes Sections 194.032 and 194.034, which address hearings before the VAB, do not provide for this.

Arguably, if the Legislature intended to allow the Property Appraiser or Tax Collector to be permitted to reschedule a VAB hearing, they would have included this authority in the Statute.”

The table below summarizes the School Board Attorney’s analysis and the possible remedies:

Concern	Statute	Remedy
DOR Rule 12D-9.015(11) allows VAB to extend time for filing a petition for "good cause"	Florida Statutes 194.011 and 194.032 are silent as to time frame for filing a petition.	Rule Challenge
DOR Rule 12D-9.019(4)(a) allows petitioner to reschedule one time without good cause.	Florida Statutes 194.032(2)(a) provides "petitioner may reschedule the hearing a single time".	Rule Challenge
DOR Rule 12D-9.019(4)(b) allows rescheduling for good cause.	Florida Statutes 194.032 does not provide for additional rescheduling for good cause.	Rule Challenge
DOR Rule 12D-9.019(4)(c) allows Property Appraiser or Tax Collector to submit a rescheduling request.	Florida Statutes 194.032 does not provide for Property Appraiser or Tax Collector to request a rescheduling of a VAB hearing.	Rule Challenge
DOR rule 12D-9.019(7)(b) limits petitioner's wait time for hearing to 4 hours.	Florida Statutes 194.032(2)(a) & (b) limits wait time to 2 hours. <i>(rescheduling as a result of exceeding wait time is not counted against petitioner)</i>	Mandamus
All petitions should be <u>signed by the taxpayer</u> .	Florida Statutes 194.011(3)(a) requires petition to be sworn by "petitioner". 12D-9.015(1)(f)(1) requires petition to contain signature fields to be signed by the "taxpayer". 12D-9.015(9)(b) states that a "completed petition" is one that provides information for all required elements that are displayed on the department's form.	Mandamus

The next table lists the various rescheduling opportunities that are found in the DOR's **Uniform Policies and Procedures Manual for Value Adjustment Boards** and those authorized by Florida Statutes.

Rescheduling Opportunities				
Authority	Petitioner	Property Appraiser	Tax Collector	Clerk Of Courts
F.S.	194.032(2)(a)			
	192.0105(2)(d)			
Total	2	0	0	0
DOR Rule	12D-9.019(3)(a)(8)	12D-9.019(4)(c)	12D-9.019(4)(c)	12D-9.019(7)(a)
	12D-9.019(4)(a)	12D-9.020(3)(b)		12D-9.019(7)(b)
	12D-9.019(5)			12D-9.020(2) (b)
	12D-9.019(7)(b)			12D-9.021(6)
	12D-9.020(2)(b)			12D-9.021(7)
	12D-9.021(6)			12D-9.021(7)(a)
	12D-9.021(7)			12D-9.022(2)(a)
	12D-9.02(7)(a)			12D-9.022(4)(b)
	12D-9.024(10)			12D-9.022(4)(d)(1)
				12D-9.022(4)(d)(2)
				12D-9.025(4)(f)(1)
				12D-9.025(8)(b)
Total	9	2	1	12

In addition, some DOR rules create conflicts. For example, when the PAO requests that a hearing be rescheduled or cancelled (12D-9.019), the petitioner may not be afforded the opportunity of deciding if he or she would like to continue without the PAO:

DOR Rule 12D-9.024 Procedures for Commencement of a Hearing. [Emphasis added]

(10) If the property appraiser or tax collector does not appear by the commencement of a scheduled hearing, except a good cause hearing, the board or Special Magistrate shall state on the record that the property appraiser or tax collector did not appear at the hearing. Then, the board or Special Magistrate shall request the petitioner to state for the record whether he or she wants to have the hearing rescheduled or wants to proceed with the hearing without the property appraiser or tax collector. If the petitioner elects to have the hearing rescheduled, the board clerk shall reschedule the hearing. If the petitioner elects to proceed with the hearing without the property appraiser or tax collector, the board or Special Magistrate shall proceed with the hearing and shall produce a decision or recommended decision.

The DOR is charged with the responsibility of developing rules to implement the applicable laws, as they relate to the VAB and the PAO. As required, the DOR has created a **Uniform Policies and Procedures Manual for Value Adjustment Boards** (October 2013) to be used by VABs and the PAO in managing their activities and to ensure that taxpayer rights are protected. DOR rules are a subset of Chapter 12D-9 of the Florida Administrative Code.

F.S. 194.011 - Assessment notice; objections to assessments

(5)(b) The department shall develop a uniform policies and procedures manual that shall be used by value adjustment boards, Special Magistrates, and taxpayers in proceedings before value adjustment boards. The manual shall be made available, at a minimum, on the department's website and on the existing websites of the clerks of circuit courts.

The DOR manual states, in pertinent part:

“Rules and Forms: Value adjustment boards, board clerks, taxpayers, property appraisers, and tax collectors are required to follow these rules, as stated in sections 195.027(1) and 194.011(5)(b), Florida Statutes.”

In-depth reviews, by the OMCA and the School Board Attorney's (SBA) Office, of the DOR's manual and the enabling Statutes have concluded that some of the DOR's rules create opportunities for the taxpayer and the Property Appraiser to reschedule VAB hearings, contrary to the strict construction of the law. In essence, some of the DOR's rules, including its rules on rescheduling, are exceeding the authority granted by Florida Statutes.

For example, DOR Rule 12D-9.019(4)(c) allows the PAO or TC to reschedule a hearing even though the rulemaking authority afforded by F.S. 194.032 does not provide for rescheduling by the PAO:

<i>DOR Rule 12D-9.019 – Scheduling and Notice of a Hearing [Emphasis added]</i>
<i>(4)(c): The property appraiser or tax collector may submit a written request to the board clerk to reschedule the hearing, and must provide a copy of the request to the petitioner. If there is a conflict, such as the attorney or staff needs to attend two different hearings which are scheduled at the same time, the Property Appraiser or tax collector may request a reschedule.</i>

In some cases, the PAO has cited lack of staff as the reason for rescheduling a hearing. Nevertheless, pursuant to F.S. 192.0105, the petitioner has the statutory right to have his or her petition heard on the date and time specified on the hearing notice. Moreover, the PAO has a fiduciary duty to properly staff its office to ensure that a petitioner's hearing date and time take place as scheduled:

Florida Statutes 192.0105 – Taxpayer rights, (2) THE RIGHT TO DUE PROCESS [Emphasis added]
<i>(f): The right, in value adjustment board proceedings, to have all evidence presented and considered at a public hearing at the scheduled time, to be represented by an attorney or agent, to have witnesses sworn and cross-examined, and to examine property appraisers or evaluators employed by the board who present testimony (see ss. 194.034(1)(a) and (c), and (4), and 194.035(2)).</i>

In addition, some DOR rules allow opportunities for the taxpayer or the taxpayer's agent to reschedule hearings beyond what is set forth in Statute:

<i>DOR Rule 12D-9.019 – Scheduling and Notice of a Hearing</i>
<i>(4)(b)(5): Other reasons beyond the control of the petitioner.</i>

Contrary to F.S., the above rule creates a condition whereby a hearing can be potentially rescheduled by a petitioner or a petitioner's agent an unlimited number of times:

<i>Florida Statutes 194.032 [in pertinent part and <u>emphasis added</u>]</i>
<i>(2)(a) ...Upon receipt of the [hearing] notice, <u>the petitioner may reschedule the hearing a single time</u> by submitting to the clerk a written request to reschedule, at least 5 calendar days before the day of the originally scheduled hearing.</i>

Together, the various instances set forth in the DOR's rules, collectively provide for the PAO and petitioner to reschedule hearings multiple times. As required by F.S. 194.032(2)(a) and DOR Rule 12D-9.007(5), whenever a hearing is rescheduled, all subsequent hearings must be scheduled a minimum of 25 days later.

It is important to acknowledge that although the PAO and/or petitioners may contribute to delays in the VAB appeals process due to rescheduling, such delays are allowed pursuant to DOR rules.

RECOMMENDATIONS:

1.1 The School District administration should explore further and initiate the appropriate available remedies in order to:

- **Revise DOR rules to bring them in line with the corresponding F.S.**
- **Enforce compliance with F.S.**

MANAGEMENT'S RESPONSE:

SCHOOL DISTRICT

1.1 The Administration concurs and pursuant to the School Board's 2015 Legislative agenda adopted on October 7, 2014 is pursuing statutory remedy through the legislative process of allowing only one reschedule for good cause by the petitioner. HB 695 sponsored by Representative Avila and SB 972 sponsored by Senator Flores have been filed. In fact, the legislation aims at modifying the statutes related to the Value Adjustment Board to:

- *Limiting the number of rescheduling to no more than one for good cause;*
- *Requiring the property owner's signature or evidence of owner's consent for appeals;*
- *Tying the interest for overpayment of tax liability to the market rate on July 1st of each year;*
- *Requiring the property appraiser and Value Adjustment Boards to complete the work within 12 months; and*
- *Providing much needed accountability over the Value Adjustment Boards.*

1.2 The appropriate agencies should consider the following recommendations:

A. Require that VABs only use the rescheduling criteria stated in F.S. 194.032 (2) (a).

B. VABs should be required to develop mitigation plans to be invoked when a specific percentage or number of petitions are exceeded.

MANAGEMENT’S RESPONSE:

VALUE AJUSTMENT BOARD

We will follow directions/policies established by the Value Adjustment Board.

2.0 THE VAB's SYSTEM OF RECORDS (SOR) IS OUTDATED

<i>Government Accountability Office, Standards for Internal Control in the Federal Government, Page 51 – Design Activities for the Information System</i>
<i>Principle 11.05</i> - Management also evaluates information processing objectives to meet the defined information requirements. Information processing objectives may include the following: <ul style="list-style-type: none"> • <i>Completeness</i> - Transactions that occur are recorded and not understated. • <i>Accuracy</i> - Transactions are recorded at the correct amount in the right account (and on a timely basis) at each stage of processing. • <i>Validity</i> - Recorded transactions represent economic events that actually occurred and were executed according to prescribed procedures.
<i>NIST³ - Access Control Policy and Procedures</i>
(AC-1) The organization develops, documents, and disseminates an access control policy that addresses: purpose, scope, roles, responsibilities, management's commitment, coordination among organizational entities, compliance, procedures to facilitate the implementation of the access control policy and associated access controls; and reviews and updates the access control policy and procedures.
<i>NIST - Content of Audit Records</i>
(AU-3) The information system generates audit records containing information that establishes what type of event occurred, when the event occurred, where the event occurred, the source of the event, the outcome of the event, and the identity of any individuals or subjects associated with the event.

The VAB staff enters and maintains petition-related data into a legacy SOR referred to as CJIS (Criminal Justice Information System). Prior to the OMCA's involvement, data were requested for available tax years by the M-DCPS Treasury Department. Several months later, and with the completion of the 2012 Tax Year and the start of 2013 Tax Year, the OMCA separately requested an extract from the SOR to obtain more recent information.

³ The National Institute of Standards and Technology (NIST) Special Publication 800-53-R4, "Security and Privacy Controls for Federal Information Systems and Organizations" Revision 4. The NIST is a national organization charged with developing Information Technology (IT) security standards and guidelines for governmental information systems.

We used the data obtained to gain an understanding of the information being captured and to assist in selecting petitions for review. Each row of data represents a petitioned property identified by a folio number. The data are a historical record of each year's petition activity and facilitates the scheduling of hearings, names of involved parties, various status codes, property values and notes from the presiding magistrate. In addition, the data are used to generate VAB-related documents such as agendas and hearing notices.

Our examination of the data showed inconsistencies. Initially, many petitions that appear to have been rescheduled are actually date fields being populated due to the logistical shuffling of board⁴ rooms, generating a false "reschedule" indicator and overstating rescheduled hearing numbers. In addition, VAB staff does not consistently use appropriate codes to specify the status of petitions. For example, many different conditions are being lumped under the same code.

An example of the system's limitation occurs when a petition is logged into the system and subsequently settled by the PAO. As a workaround, the petition must first be coded as a rescheduled hearing before it can be coded as a withdrawal in order to close the petition. This can inflate the data and be incorrectly counted as a reschedule.

Event logging is another example of the system's limitation. Specifically, data identifying user logon and logoff activity was not available.

Additional examination of the data revealed that, although not in significant numbers compared to the number of petitions filed, duplicate folios were present in all years which add to the total count of petitions for the tax year. (See table below.)

Summary of Petitions Filed By Agent Class and Duplicate Petitions Filed By Year				
Tax Year	Agent Class		Total Petitions	Duplicate Petitions
	Agent	Non-Agent		
2009	109,459	28,953	138,412	130
2010	87,433	15,733	103,166	100
2011	74,856	8,320	83,176	191
2012	63,670	6,507	70,177	170
2013 [#]	61,229	3,338	64,567	65

[#] The total number of petitions may vary from totals reported elsewhere in this report due to inconsistencies in the dataset.

More importantly, some duplicate folios are the result of petitions filed by different agents. However, according to the VAB Manager, the VAB contacts the filers of the duplicate petition

⁴ A "board" is a docket of combined cases (i.e., property folios) assigned to each Special Magistrate for a given scheduled hearing. According to VAB manager and staff, a "board" typically comprises 50 to 60 cases.

and asks them to submit authorization from the taxpayer. The petition for which the taxpayer's authorization is provided is deemed to be the active petition and the other petition is cancelled.

To summarize:

- Data extraction is time consuming
- A limited number of status codes are being used incorrectly
- Workarounds are used in order to alter petition status and generate incorrect statistics
- The system permits entry of duplicate folios
- Some VAB data may not be accurately representing petition statistics
- Some event logging information is not available

Interviews of key personnel conducted jointly by the OIG and the OMCA corroborate the system's limitations and the overdue need for replacement. At the time of this review, about 326 individuals had some type of access to the VAB's system, including individuals who are presently employed by unrelated county departments and may continue to have access.

Lastly, based upon our inquiries and interviews, no evidence of a prior system audit or review was available.

RECOMMENDATIONS:

- 2.1 The VAB should consider replacing the legacy system. This important resource is necessary in order to accurately and efficiently process taxpayer petitions.**

Consideration should be given, but not limited to:

- **The ability of a system to process current and future petition loads**
- **Expansion or addition of data elements, including petition codes to accommodate existing and potential petition data needs**
- **Program controls limiting or preventing duplicate entries**
- **Robust data extraction capabilities**
- **Program controls used to grant, monitor and modify appropriate systems access**
- **Report generating capabilities**
- **Robust system event logging and the ability to generate audit records**

MANAGEMENT'S RESPONSE:

VALUE ADJUSTMENT BOARD

We concur that the VAB's system of record should be upgraded.

- 2.2 In the interim, the current system should be reviewed to document appropriate system use policies and procedures in order achieve consistency and improve data reliability.**

MANAGEMENT'S RESPONSE:

VALUE ADJUSTMENT BOARD

We concur.

3.0 SPECIAL MAGISTRATE COMPENSATION APPEARS REASONABLE, BUT INCONSISTENCIES SUGGEST INEFFICIENT USE OF RESOURCES

Integral to the VAB appeals process is the use of SMs, who are independent individuals hired by the VAB to hear and rule on taxpayer petitions. To establish a comparison of compensation for Miami-Dade County SMs, we surveyed 20 other Florida counties with the highest real property value and obtained information about their VAB operations. Fourteen (70%) counties surveyed responded.

The survey results in response to our specific questions on SM's compensation showed the following:

The 2013 daily pay rate for the surveyed counties ranged between \$360 and \$1,000; however, some of the rates provided by the surveyed counties were not based on a full eight-hour work day. Some of these counties also pay hourly rates ranging between \$90 and \$150.

By comparison, MDC's VAB has a daily pay rate of \$700 per "board"⁵ (flat rate) and an hourly rate of \$87.50, when applicable. According to the VAB Manager, these rates have been in effect for a considerable amount of time with no specific effective date provided. Although the \$700 daily pay rate (\$87.50 hourly) appears reasonable in comparison to the rates paid by the other VABs surveyed, it is important to note that the flat rate is per board and does not always entail a full eight-hour work day by the SM.

The flat rate (\$700) is typically paid when boards are scheduled for hearing from the morning (i.e., 8:30 a.m. to 11:30 a.m.) to 1:30 p.m. or later (i.e., 3:30 p.m.), and usually consist of 50-60 petitions. The \$87.50 hourly rate (\$700/8hrs) is typically paid to SMs for services including case reconsiderations, orientations, pre-confirmed half days and other additional work authorized by the VAB Manager. Also, the VAB Manager stated that when hearings are cancelled on the date of the scheduled hearing, the SM is paid the equivalent of a half-day (\$350) because of the inconvenience to the SM.

⁵ *Supra*, p.24

In order to verify that payments to SMs are properly approved and supported, of the 34 SMs that invoiced the VAB for the 2012 Tax Year, we selected the billings of four SMs for testing; three of which billed the largest amounts. The amount invoiced by SM for the 2012 Tax Year totaled \$650,308, of which the amounts related to the four SMs selected for testing totaled \$147,394 (22.7%).

However, the payroll summary data provided to us by the VAB indicated the four SMs billings totaled \$150,019, for a difference of \$2,625 or the equivalent of 30 hours based on the cited hourly rate.

We tested all 207 invoices provided to us by the VAB for the four SMs and traced the hearing dates listed in the invoices to the scheduled hearing dates in the data to ensure that petitions were scheduled on the same date and the amount invoiced was reasonable.

All the invoices reviewed were complete and properly approved. However, in some instances, we noted that hearing schedules were inconsistent with the amount billed. We requested videos of 61 hearings, including those with inconsistencies as stated above, along with others with no noted inconsistency for further review.

Of the 61 hearings viewed, we noted the following:

- There were 11 (18%) instances when board hearings lasted less than four hours and the presiding SM received the full day's rate of pay of \$700.
- There were 13 (21%) instances when the duration of the board hearings lasted more than four hours, but less than six hours and the presiding SM received the full day's rate of pay of \$700.
- There were 13 (21%) instances when the duration of board hearings lasted more than six hours, but less than eight hours and the presiding SM received the full day's rate of pay of \$700.
- There were two (3%) instances when the duration of the board hearings lasted more than eight hours but less than 11 hours and the presiding SM received the full day's rate of pay of \$700.
- There were 14 (23%) instances when the board hearing videos were turned off while the SMs were still working and, therefore, we were unable to determine the time worked by the SMs.

- There were three (5%) instances when the duration of the board hearings lasted between three and four hours and the presiding SM received the half day's rate of pay of \$350.
- There were 2 (3%) instances when board hearings lasted less than one hour and the presiding SMs received the half day's rate of \$350. For these board hearings, it was discussed that the scheduled cases were either settled the day before or rescheduled for a later date. Apparently, this was not communicated to the SMs prior to their arrival.
- There were three (5%) instances when the duration of the board hearings lasted between six hours and eight and one half hours, and the presiding SMs received \$1,050 for working a "double load" hearing (approximately 100 cases). The numbers of petitions heard ranged between 83 and 141.
- In one instance, the board hearing was cancelled the same day of the hearing and the SM presiding received a full day's rate of pay of \$700. A note on the SM's invoice indicated that, "board cancelled same day, SM not notified." According to the VAB Manager, the SM was paid \$700 due to the hearings being scheduled to be heard from the morning to the afternoon. The number of petitions scheduled to be heard were 55.

In the cases noted above, where the videos were turned off before the SM ceased work, we requested the SM's system log-in/log-out time reports as an alternate to verify the hours worked, however, this information was not available.

In addition, two SMs invoiced 52 hours, totaling \$4,550 for work conducted after the hearing dates. Although approval was obtained for these hours billed, we were unable to verify the hours worked. No videos or documents to support the hours worked (i.e., log sheets) were available. No other substantiating evidence was provided. Again, we requested system access reports as an alternate means of verifying the hours worked. However, this information was not available.

It is apparent from the foregoing that there is inconsistency in the manner in which SMs are compensated in similar situations. Some situations noted above might even raise the question of whether SMs were paid the appropriate amount or compensated equitably relative to their peers. In addition, some of the expenses incurred by the School District related to the VAB process (see Finding No. 9) might be unintentionally and consequently inflated due to the noted inconsistencies.

3. RECOMMENDATION:

An assessment of terms for payment to SM's for services and the distribution of assignments should be considered. For example:

- **Minimum number of hours to qualify for a full work day and half day of compensation**
- **Establish a payroll process that substantiates time worked after the hearing**
- **Availability of SM to VAB after completion of their assigned hearings when minimum numbers of hours worked are not fully met to maximize the use of SM's services**
- **Although we agree that the length of board hearings depend on several factors, including the magistrates experience, the level of petition difficulty, the number of different regions/areas and property types, we believe that the VAB and the PAO need to place emphasis on developing and coordinating board hearings and schedules that will best utilize the experience and availability of the SM's**

MANAGEMENT'S RESPONSE:

VALUE ADJUSTMENT BOARD

We will follow directions/policies established by the Value Adjustment Board.

4.0 MAGISTRATES SHOULD BE CONTRACTED FOR THEIR SERVICES

We surveyed twenty of the highest valued Florida counties to understand how others are managing certain aspects of the VAB process. Fourteen (70%) responded on a variety of topics including the hiring process of SMs. One of the survey questions asked whether their county entered into a contract with special magistrates for their services, of which 12 out of 14 counties responded in the affirmative. MDC magistrates are not under contract or agreement and no formal guidelines exist that establish the terms of a SM's professional relationship with the VAB. However, there is no requirement that the VAB enter into a contract or agreement with SM's. The DOR provides and conducts training for SM's at least once each state fiscal year.

Also, as noted in the Florida Auditor General Report No. 2014-194 (May 2014), a recommendation was made for the Legislature to consider "...requiring the rules of conduct or ethical codes with appropriate sanctions, be established for VAB members and staff, VAB clerks, VAB attorneys, and special magistrates in their respective roles in the appeal process." We support this recommendation.

RECOMMENDATION:

- 4. We recommend that the VAB consider contracting for SM services. Contracts should include, but not be limited to, the following provisions:**
- **Hearing schedules and terms of services**
 - **Specific standards of performance**
 - **Completion of work within one week of hearing date or acceptable time to complete work; with the possibility of financial penalty for not meeting the deadline**
 - **Compensation rates**
 - **Annual magistrate performance assessment**
 - **Code of conduct**
 - **Conflict of interest**
 - **Reason for termination of services**

MANAGEMENT'S RESPONSE:

VALUE ADJUSTMENT BOARD

We will follow directions/policies established by the Value Adjustment Board.

5.0 CONTINUE DOCUMENTATION AND VERIFICATION OF SPECIAL MAGISTRATE QUALIFICATIONS

As part of our audit, we reviewed the qualifications for all 2013 applications for SMs of the VAB in MDC.

F.S. 194.035 - special magistrates; property evaluators

(1) A special magistrate appointed to hear issues of exemptions and classifications shall be a member of The Florida Bar with no less than 5 years' experience in the area of ad valorem taxation. A special magistrate appointed to hear issues regarding the valuation of real estate shall be a state certified real estate appraiser with not less than 5 years' experience in real property valuation. A special magistrate appointed to hear issues regarding the valuation of tangible personal property shall be a designated member of a nationally recognized appraiser's organization with not less than 5 years' experience in tangible personal property valuation. (3) Notwithstanding subsection (1), a person who has 3 years of relevant experience and who has completed the training provided by the department under this subsection may be appointed as a special magistrate.

DOR Rule 12D-9.010 has the same requirements as the aforementioned Statute except that the DOR requires the SM to attend the training annually.

We reviewed 31 “Applications for Appraiser Special Magistrates” for compliance with the Statute and rule. Our review disclosed that 25 of these 31 applicants were appointed as a SM for the 2013 Tax Year. All 25 applicants had the required minimum qualifications to serve as a SM. Our review of the background checks conducted by the OIG in conjunction with this audit show that no details existed that would have prevented any of the 2013 SMs from having been appointed.

Also, as part of our audit, we noted that none of the 31 application packages contained documentation showing that VAB personnel had reviewed the SMs' qualifications. Both F.S. 194.035 (1) and DOR rule 12D-9.010 (5) (a) require that the VAB shall verify the SM's qualifications. This condition was also cited in Florida Auditor General Report No. 2014-194.

Our review of the OIG interviews indicate that during 2014 the VAB Manager implemented a verification process whereby the VAB legal counsel reviewed all the attorney SM applications and documented the on-line information available from the Florida Bar for each applicant. We also searched for and confirmed each applicant's licensing information from the Florida Department of Business and Professional Regulation.

A review of 37 SM applications for the 2014 tax year revealed that VAB legal counsel is documenting and verifying applicant qualifications. The VAB Manager indicated that although verifications were being done in the past, they may not have been documented.

RECOMMENDATION:

- 5. Continue to document the verification of special magistrate qualifications. A mechanism should be developed to address expiring licensures or memberships in professional associations.**

MANAGEMENT'S RESPONSE:

VALUE ADJUSTMENT BOARD

We will follow directions/policies established by the Value Adjustment Board.

6.0 A SMALL NUMBER OF UNLICENSED AGENTS WERE NON-COMPLIANT WITH TAXPAYER AUTHORIZATION REQUIREMENTS

DOR Rule 12D-9.018 - Representation of the Taxpayer

(1) A taxpayer has the right, at the taxpayer's own expense, to be represented by an attorney or by an agent. (2) The individual, agent, or legal entity that signs the petition becomes the agent of the taxpayer for the purpose of serving process to obtain jurisdiction over the taxpayer for the entire value adjustment board proceedings, including any appeals of a board decision by the property appraiser or tax collector. (3) The agent need not be a licensed individual or person with specific qualifications and may be any person, including a family member, authorized by the taxpayer to represent them before the value adjustment board. (4) A petition filed by an unlicensed agent must also be signed by the taxpayer or accompanied by a written authorization from the taxpayer.

We performed various audit tests of registered agents who filed petitions on behalf of a taxpayer for the 2011, 2012 and 2013 Tax Years. One test was performed to determine the extent to which the VAB validates the credentials of the agent and the status of said credentials through its agent registration process. For our sample of 18 out of 75 registered agents, we found no documented evidence of the VAB staff verifying the credentials of the registrant. However, the applicable DOR rule with respect to filing a petition does not require further verification for licensed agents:

DOR Rule 12D-9.015 - Petition; Form and Filing Fee

(9)(c) The board clerk shall rely on the licensure information provided by a licensed agent, or written authorization provided by an unlicensed agent, in accepting the petition.

Whether it is appropriate to apply this rule to the VAB's agent registration process or not, is an unsettled matter. However, because the taxpayer authorization requirements are different for licensed and unlicensed agents, good business practice would require that the applicant's credentials be validated to enable the VAB to properly classify the registered agent (i.e., licensed or unlicensed).

Another test was performed to determine the number of licensed and unlicensed agents, from the pool of 75 registered agents who filed petitions in the 2011, 2012 and 2013 Tax Years. Through our test, we determined that there were 68 licensed agents and 7 unlicensed agents.

We further tested a random sample of 34 petitions filed by the seven unlicensed agents for the 2011, 2012 and 2013 Tax Years. For 23 (68%) of the 34 petitions tested, we found no documentary evidence of the unlicensed agents obtaining the proper authorization from the taxpayer. Petitions filed by two of the seven unlicensed agents were accompanied by the taxpayer's written authorization. Petitions filed by the remaining five agents did not have written authorization by the taxpayer. However, based on the nature of some of the agents' clients, this issue may be due to lack of documentation in the VAB.

The total number of petitions filed by these seven unlicensed agents during said period was 3,001 as reported in the VAB's database.

Our review of the interviews conducted by the OIG disclosed that VAB staff does not request proof of the taxpayer's written authorization when accepting a petition from an unlicensed agent as required. By not obtaining the proof of the taxpayer's authorization, the VAB is not complying with DOR Rule 12D-9.018.

RECOMMENDATION:

- 6. To ensure compliance with DOR rules, the VAB should develop a systemic mechanism for obtaining the required written proof from unlicensed agents that are duly authorized to represent the taxpayer in filing a petition before the VAB.**

In addition, although not required by law, the VAB should include a process to verify the licensure information or credentials listed in the VAB's Registered Agent Application. Performing this verification would enable the VAB to accurately determine the proper classification of the applicant, (i.e., licensed agent or unlicensed agent) and consequently, the appropriate taxpayer's authorization that is required of the agent.

MANAGEMENT'S RESPONSE:

VALUE ADJUSTMENT BOARD

We will follow directions/policies established by the Value Adjustment Board.

7.0 THE VAB SHOULD TIMELY COMPLY WITH HEARING NOTICE REQUIREMENTS

A VAB hearing requires that the petitioner and the PAO representative meet at a predetermined date and time for presentation of evidence to a SM. In accordance with Florida Statutes 194.032(2)(a), the VAB is responsible for scheduling and notifying the petitioner and the PAO no less than 25 days prior to the hearing date. Based upon this Statute, DOR Rule 12D-9.007 states:

<i>DOR Rule 12D-9.007 - Role of the Clerk of the Value Adjustment Board</i> <i>[Emphasis added]</i>
<i>(5) No less than 25 calendar days prior to the day of the petitioner's scheduled appearance before the board, the board clerk must notify the petitioner of the date and time scheduled for the appearance. The board clerk shall simultaneously notify the property appraiser or tax collector. If, on the taxpayer's petition, he or she requests a copy of the property record card, the board clerk shall obtain a copy of the property record card from the property appraiser and provide it to the petitioner no later than with the notice of the scheduled time of his or her appearance.</i>

As part of our testing, 57 hearings were randomly selected for the years 2011, 2012 and 2013. Auditors noted that two (3.5%) of the hearings in 2011 did not have the evidence to support proper notification of the hearing date to the petitioner 25 calendar days in advance.

RECOMMENDATION:

7. Although the number of instances noted is small, the VAB should nevertheless ensure that the 25 day criterion of notifying the petitioner be adhered to in order to comply with the statutory requirement and avoid any delays in the VAB hearing process.

MANAGEMENT'S RESPONSE:

VALUE ADJUSTMENT BOARD

The failure to update the mail date in the VAB system does not necessarily imply that proper notification was not afforded to the petitioner. The VAB will monitor that the procedure is followed and verified for each hearing scheduled.

8.0 SCHOOL DISTRICTS SHOULD HAVE THE RIGHT TO AUDIT VAB EXPENSES

Section 194.015, F.S., establishes authority for the creation of a value adjustment board, its membership, funding and other requirements. Pursuant to this Statute, 40% of the VAB's expenses are to be borne by the School District and 60% by the county commission:

F.S. 194.015 – Value Adjustment Board (in pertinent part and emphasis added)

“There is hereby created a value adjustment board for each county, which shall consist of two members of the governing body of the county as elected from the membership of the board of said governing body, one of whom shall be elected chairperson, and one member of the school board as elected from the membership of the school board, and two citizen members, one of whom shall be appointed by the governing body of the county and must own homestead property within the county and one of whom must be appointed by the school board and must own a business occupying commercial space located within the school district....Two-fifths of the expenses of the board shall be borne by the district school board and three-fifths by the district county commission.”

For the period of January 2009 to September 2014, M-DCPS has paid \$4.5 million to the VAB.

There is currently no formal mechanism in place, in Statute or otherwise, to allow the School District to audit the expenses of the VAB or the PAO related to the VAB process. Under the current arrangement, the School District is de facto paying invoiced expenses without proper/adequate verification of the accuracy of said expenses.

RECOMMENDATION:

8. The School District should consider developing a mechanism, whether through contracted agreements or legislation, to allow it to audit the expenses related to the VAB process.

SCHOOL DISTRICT

MANAGEMENT'S RESPONSE:

8. *The Administration concurs and pursuant to the School Board's 2015 Legislative agenda adopted on October 7, 2014 is pursuing statutory remedy through the legislative process of allowing only one reschedule for good cause by the petitioner. HB 695 sponsored by Representative Avila and SB 972 sponsored by Senator Flores have been filed. In fact, the legislation aims at modifying the statutes related to the Value Adjustment Board to:*
- *Limiting the number of rescheduling to no more than one for good cause;*
 - *Requiring the property owner's signature or evidence of owner's consent for appeals;*
 - *Tying the interest for overpayment of tax liability to the market rate on July 1st of each year;*
 - *Requiring the property appraiser and Value Adjustment Boards to complete the work within 12 months; and*
 - *Providing much needed accountability over the Value Adjustment Boards.*

9.0 INTEREST ON OVERPAID PROPERTY TAX MAY CONTRIBUTE TO DELAYS IN THE PROPERTY TAX RESOLUTION PROCESS

Pursuant to F.S., a taxpayer who files a petition before the VAB is paid 12% annually on the overpaid amount:

F.S. 194.014 – Partial payment of ad valorem taxes; proceedings before value adjustment board. [Emphasis added]

(1)(a) A petitioner before the value adjustment board who challenges the assessed value of property must pay all of the non-ad valorem assessments and make a partial payment of at least 75 percent of the ad valorem taxes, less the applicable discount under s. 197.162, before the taxes become delinquent pursuant to s. 197.333.

(2) If the value adjustment board determines that the petitioner owes ad valorem taxes in excess of the amount paid, the unpaid amount accrues interest at the rate of 12 percent per year from the date the taxes became delinquent pursuant to s. 197.333 until the unpaid amount is paid. If the value adjustment board determines that a refund is due, the overpaid amount accrues interest at the rate of 12 percent per year from the date the taxes became delinquent pursuant to s. 197.333 until a refund is paid. Interest does not accrue on amounts paid in excess of 100 percent of the current taxes due as provided on the tax notice issued pursuant to s. 197.322.

The interest provisions of the cited Statute and recent financial market conditions may be providing an incentive for taxpayers to either delay a settlement of a disputed assessment with the Property Appraiser, appeal their assessment to the VAB, or both. Both conditions have the effect of delaying the certifying of the tax roll. Moreover, the interest cost to the local taxing authorities may be unnecessarily burdening.

We performed a comparative analysis of the statutorily prescribed rate of interest to the available interest rates offered in the general financial market and to the CPI for All Urban Consumers (1982-84 = 100) as reported by the Bureau of Labor Statistics.

Our analysis showed that the average interest rate earned on money market deposit accounts in the Miami area over the last five years was 0.52%⁶ per year, (11.48% lower than the 12% in statute).

⁶ Source: www.Bankrate.com

The CPI for the last five years was 1.5%, 1.7%, 3%, 1.5% and 2.7% for years 2014, 2013, 2012, 2011 and 2010, respectively (an average of 9.9% lower than the 12% in statute).

For the 2011, 2012 and 2013 tax years, M-DCPS has paid an estimated \$7 million in interest related to overpaid taxes.

RECOMMEDATION

9. **As an aim to rectify all potential causes that may contribute to delays in the VAB appeals process, the School District's administration should explore opportunities to modify the interest provision contained in Section 194.014(2), F.S., by bringing the annual rate of interest more in line with market rates.**

MANAGEMENT'S RESPONSE:

SCHOOL DISTRICT

9. *The Administration concurs and pursuant to the School Board's 2015 Legislative agenda adopted on October 7, 2014 is pursuing statutory remedy through the legislative process of allowing only one reschedule for good cause by the petitioner. HB 695 sponsored by Representative Avila and SB 972 sponsored by Senator Flores have been filed. In fact, the legislation aims at modifying the statutes related to the Value Adjustment Board to:*
 - *Limiting the number of rescheduling to no more than one for good cause;*
 - *Requiring the property owner's signature or evidence of owner's consent for appeals;*
 - *Tying the interest for overpayment of tax liability to the market rate on July 1st of each year;*
 - *Requiring the property appraiser and Value Adjustment Boards to complete the work within 12 months; and*
 - *Providing much needed accountability over the Value Adjustment Boards.*

Management's Responses (Complete text)



HARVEY RUVIN
CLERK OF THE CIRCUIT AND COUNTY COURTS
Miami-Dade County, Florida

March 2, 2015

Jose F. Montes De Oca, Chief Auditor
Miami-Dade County Public Schools
Office of Management and Compliance Audits

Re: Audit of Miami-Dade County Value Adjustment Board Appeals Process

Dear Mr. Montes De Oca,

Thank you for the opportunity to respond to the latest Audit Report that we received on February 26, 2015. The following responses follow the order of the issues presented in the findings:

Finding # 1: Some DOR Rules may be exceeding statutory authority.

1.1: Response: This finding/recommendation is not applicable for us to respond to.

1.2: Response: We will follow directions/policies established by the Value Adjustment Board.

Finding # 2: The VAB's system of record (SOR) is outdated.

2.1 Response: We concur that the VAB's system of record should be upgraded.

2.2 Response: We concur.

Finding # 3: Special Magistrate compensation is reasonable, but inconsistencies suggest inefficient use of resources.

3.1 Response: We will follow directions/policies established by the Value Adjustment Board.

Finding # 4: Magistrates should be contracted for their services.

4.1 Response: We will follow directions/policies established by the Value Adjustment Board.

Administrative Services Division - Central Depository - Civil Division - Clerk of the Board
Comptroller/Auditor - Criminal Division - District Courts Division - Family Division - Juvenile Division
Marriage License - Parking Violations - Recording - Records/Archives Management - Technical Services
Division - Traffic Division
CLK/CT 702 2/94

Finding # 5: Continue Documentation and verification of special magistrate qualifications.

5.1 Response: We will follow directions/policies established by the Value Adjustment Board.

Finding # 6: A small number of unlicensed agents were non-qualified with taxpayer authorization requirements.

6.1 Response: We will follow directions/policies established by the Value Adjustment Board.

Finding # 7: The VAB should timely comply with hearing notice requirements.

7.1 Response: The failure to update the mail date in the VAB system does not necessarily imply that proper notification was not afforded to the petitioner. The VAB will monitor that the procedure is followed and verified for each hearing scheduled.

Finding # 8: School districts should have the right to audit VAB expenses.

8.1 Response: This finding/recommendation is not applicable for us to respond to.

Finding # 9: Interest on overpaid property tax may contribute to delays in the property tax resolution process.

9.1 Response: This finding/recommendation is not applicable for us to respond to.

If you require any further information, please do not hesitate to contact me.

Sincerely,
HARVEY RUVIN, CLERK
CIRCUIT AND COUNTY COURTS



By: Mark Martinez, Senior Deputy

cc: Harvey Ruvin, Clerk of Courts
Liza Saboya-Fernandez, Director, Clerk's Strategic Management and Budget

CLK/CT 702 2/94

Anti-Discrimination Policy

Federal and State Laws

The School Board of Miami-Dade County, Florida adheres to a policy of nondiscrimination in employment and educational programs/activities and strives affirmatively to provide equal opportunity for all as required by:

Title VI of the Civil Rights Act of 1964 - prohibits discrimination on the basis of race, color, religion, or national origin.

Title VII of the Civil Rights Act of 1964 as amended - prohibits discrimination in employment on the basis of race, color, religion, gender, or national origin.

Title IX of the Education Amendments of 1972 - prohibits discrimination on the basis of gender.

Age Discrimination in Employment Act of 1967 (ADEA) as amended - prohibits discrimination on the basis of age with respect to individuals who are at least 40.

The Equal Pay Act of 1963 as amended - prohibits gender discrimination in payment of wages to women and men performing substantially equal work in the same establishment.

Section 504 of the Rehabilitation Act of 1973 - prohibits discrimination against the disabled.

Americans with Disabilities Act of 1990 (ADA) - prohibits discrimination against individuals with disabilities in employment, public service, public accommodations and telecommunications.

The Family and Medical Leave Act of 1993 (FMLA) - requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons.

The Pregnancy Discrimination Act of 1978 - prohibits discrimination in employment on the basis of pregnancy, childbirth, or related medical conditions.

Florida Educational Equity Act (FEEA) - prohibits discrimination on the basis of race, gender, national origin, marital status, or handicap against a student or employee.

Florida Civil Rights Act of 1992 - secures for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status.

Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA) - prohibits discrimination against employees or applicants because of genetic information.

Boy Scouts of America Equal Access Act of 2002 – no public school shall deny equal access to, or a fair opportunity for groups to meet on school premises or in school facilities before or after school hours, or discriminate against any group officially affiliated with Boy Scouts of America or any other youth or community group listed in Title 36 (as a patriotic society).

Veterans are provided re-employment rights in accordance with P.L. 93-508 (Federal Law) and Section 295.07 (Florida Statutes), which stipulate categorical preferences for employment.

In Addition:

School Board Policies 1362, 3362, 4362, and 5517 - Prohibit harassment and/or discrimination against students, employees, or applicants on the basis of sex, race, color, ethnic or national origin, religion, marital status, disability, genetic information, age, political beliefs, sexual orientation, gender, gender identification, social and family background, linguistic preference, pregnancy, and any other legally prohibited basis. Retaliation for engaging in a protected activity is also prohibited.

INTERNAL AUDIT REPORT

Audit of the Miami-Dade County Value Adjustment Board (VAB) Appeals Process - Phase 1



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MARCH 2015
